37 Am. Jur. 2d Fraud and Deceit § 101

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

D. Matters of Law

1. In General

§ 101. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 10

A.L.R. Library

Misrepresentation by one other than insurance agent as to coverage, exclusion, or legal effect of insurance policy, as actionable, 29 A.L.R.2d 213

Avoidance of release of claim for personal injuries on ground of misrepresentation as to matters of law by tortfeasor or his representative insurer, 21 A.L.R.2d 272

Forms

Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 218 (Instruction to jury—Reliance on representations of law not justified)

Representations or statements concerning domestic law are not ordinarily regarded as representations of fact but rather expressions of opinion on which no action in fraud will lie even though they are false.[1] It is accordingly well settled, as a general rule, that fraud cannot be predicated upon misrepresentations of law or misrepresentations as to matters of law.[2] In other words,

claims of fraud generally cannot arise from legal opinions;[3] a representation of law is a statement of opinion as to what the law permits or prohibits and cannot support an action for fraud.[4] The rule embraces opinions on questions of law based on facts known to both parties alike[5] and extends to representations as to what the law requires to be done[6] and representations as to what the law will not permit to be done,[7] especially when the representations are made by the avowed agent of the adverse interest,[8] or when there is no confidential relationship between the parties.[9] There are, however, exceptions to the general rule.[10]

The American Law Institute takes the position that if an assertion is one as to a matter of law, the same rules that apply in the case of other assertions determine whether the recipient is justified in relying on it.[11]

One who does not withhold or misstate the facts cannot be adjudged guilty of fraud simply because the courts finally decide the law to be other than it was claimed it to be while litigation continued over the subject in question;[12] thus, a subsequent legal decision adverse to a statement or representation previously expressed as to the law cannot establish prior fraud.[13] In addition, generally speaking, a charge of fraud cannot be based on an honest mistake in a statement of general law.[14]

Observation:

The reasons generally advanced as the basis of the rule that fraud cannot be predicated upon misrepresentations as to matters of law are that everyone is presumed to know the law, both civil and criminal,[15] and is bound to take notice of it[16] and therefore cannot, in legal contemplation, be deceived by such misrepresentations.[17] The rule is sometimes based on the theory that fraud cannot be predicated upon an expression of opinion.[18] Hence, one has no right to rely on such representations or opinions and will not be permitted to assert being misled by them.[19] In spite of this general rationale, however, there is authority that a false opinion of the law, if represented as a sincere opinion, may, as any other opinion, give rise to a fraud claim if it is reasonably relied upon by the other party.[20]

Footnotes

1 Bernhan Chemical & Metal Corporation v. Ship-A-Hoy, 200 A.D. 399, 193 N.Y.S. 372 (1st Dep't 1922), aff'd in part, rev'd in part on other grounds, 234 N.Y. 563, 138 N.E. 447 (1922).

2 Mutual Life Ins. Co. of New York v. Phinney, 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900).

3 BP America Production Co. v. Marshall, 288 S.W.3d 430 (Tex. App. San Antonio 2008), review granted, (Oct. 1, 2010) and judgment rev'd on other grounds, 342 S.W.3d 59 (Tex. 2011).

4 Brodeur v. American Home Assur. Co., 169 P.3d 139 (Colo. 2007).

5 Mutual Life Ins. Co. of New York v. Phinney, 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900); Rice v. Ragsdale, 104 Ark. App. 364, 292 S.W.3d 856 (2009).

6 McDonald v. Goodman, 239 S.W.2d 97 (Ky. 1951); Cummins v. Robinson Twp., 283 Mich. App. 677, 770 N.W.2d 421 (2009).

7 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); State v. Edwards, 178 Minn. 446, 227 N.W. 495, 65 A.L.R. 1253 (1929); In re Plain State Bank, 217 Wis. 257, 258 N.W. 783 (1935).

8 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); Powers v. Kansas City Public Service Co., 334 Mo. 432, 66 S.W.2d 840 (1933); Traders & General Ins. Co. v. Keith, 107 S.W.2d 710 (Tex. Civ. App. Amarillo 1937), writ dismissed.
Opinions regarding the status or interpretation of the law generally will not provide a basis for an action for fraud or misrepresentation particularly where the statements are made by a nonlawyer who is also an adverse party in a pending action. DePalantino v. DePalantino, 139 N.H. 522, 658 A.2d 1207 (1995).

9 Dixon v. Dixon, 211 Ga. 557, 87 S.E.2d 369 (1955); Lynch v. Dial Finance Co. of Ohio No. 1, Inc., 101 Ohio App. 3d 742, 656 N.E.2d 714 (8th Dist. Cuyahoga County 1995).

10 §§ 103 to 105.

11 Restatement Second, Contracts § 170.

12 Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965); Cucchiaro v. Cucchiaro, 165 Misc. 2d 134, 627 N.Y.S.2d 224 (Sup 1995).

13 Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965).

14 Glass v. Southern Wrecker Sales, 990 F. Supp. 1344 (M.D. Ala. 1998), aff'd, 163 F.3d 1361 (11th Cir. 1998) (applying Alabama law); Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965).

15 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); Meyer v. Santema, 1997 SD 21, 559 N.W.2d 251 (S.D. 1997); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939).

16 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); McDonald v. Goodman, 239 S.W.2d 97 (Ky. 1951); Krushew v. Meitz, 276 Mich. 553, 268 N.W. 736 (1936).

17 Dixon v. Dixon, 211 Ga. 557, 87 S.E.2d 369 (1955).

18 Agnew v. Landers, 59 N.M. 54, 278 P.2d 970 (1954).

19 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); McDonald v. Goodman, 239 S.W.2d 97 (Ky. 1951); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939).

20 AIU Ins. Co. v. Deajess Medical Imaging, P.C., 24 Misc. 3d 161, 882 N.Y.S.2d 812 (Sup 2009).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 102

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

D. Matters of Law

1. In General

§ 102. Application of rule of nonliability

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 10

A.L.R. Library

Misrepresentation by one other than insurance agent as to coverage, exclusion, or legal effect of insurance policy, as actionable, 29 A.L.R.2d 213

The rule that fraud cannot be based upon misrepresentations as to matters of law or expressions of opinion as to what is the law governing a particular transaction has been applied in many different situations. Pursuant to this principle it has been held that, as a rule, fraud cannot be predicated on misrepresentations as to the legal effect of a written instrument[1] as, for example, a deed,[2] a note and mortgage,[3] a federal land warrant,[4] or a contract of insurance.[5]

The principle of nonresponsibility for misrepresentations of law has been applied to a statement by a doctor to a widow that it was legally compulsory for her to have an autopsy performed on the body of her husband;[6] to representations as to matters of law related to the presence of mold in a home;[7] to an opinion as to when an option given to a third person for the purchase of land will expire;[8] to representations as to the responsibility of a father and mother for the debts of their son;[9] and to expressions of opinion by the vendor or vendee of realty as to the liens that certain property is subject to, or as to its freedom from liens,[10] or a false representation by a vendor of land as to a matter of law relating to rights in and to the land.[11]

In the absence of circumstances evoking exceptions to the general rule,[12] it appears that misrepresentations as to tax law are within the rule that fraud cannot be predicated upon misrepresentations as to law.[13]

Footnotes

1 Mutual Life Ins. Co. of New York v. Phinney, 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900).

2 Adkins v. Hoskins, 176 Ark. 565, 3 S.W.2d 322 (1928).

3 Wochnick v. True, 224 Or. 470, 356 P.2d 515 (1960) (representation that chattel mortgage was valid).

4 Adkins v. Hoskins, 176 Ark. 565, 3 S.W.2d 322 (1928).

5 Adkins v. Hoskins, 176 Ark. 565, 3 S.W.2d 322 (1928).

6 McDonald v. Goodman, 239 S.W.2d 97 (Ky. 1951).

7 Allstate Ins. Co. v. Sutton, 290 Ga. App. 154, 658 S.E.2d 909 (2008).

8 Rheingans v. Smith, 161 Cal. 362, 119 P. 494 (1911).

9 Yappel v. Mozina, 33 Ohio App. 371, 169 N.E. 315 (8th Dist. Cuyahoga County 1929).

10 Bonded Adjustment Co. v. Anderson, 186 Wash. 226, 57 P.2d 1046, 106 A.L.R. 166 (1936).

11 Rheingans v. Smith, 161 Cal. 362, 119 P. 494 (1911); Epp v. Hinton, 91 Kan. 513, 138 P. 576 (1914), opinion modified on other grounds on denial of reh'g, Epp v. Hinton, 91 Kan. 919, 139 P. 379 (1914).

12 §§ 103 to 105.

13 Salter v. Brown, 56 Ga. App. 792, 193 S.E. 903 (1937); Blaisdell v. Derees, 101 N.J. Eq. 723, 139 A. 178 (Ct. Err. & App. 1927); Parker v. Raleigh Sav. Bank, 152 N.C. 253, 67 S.E. 492 (1910).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 103

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

D. Matters of Law

2. Exceptions to Rule of Nonliability

§ 103. Inequitable conduct by representor; special relationship between parties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 10

A.L.R. Library

False representations as to income, profits, or productivity of property as fraud, 27 A.L.R.2d 14

Avoidance of release of claim for personal injuries on ground of misrepresentation as to matters of law by tortfeasor or his representative insurer, 21 A.L.R.2d 272

A representation of domestic law may constitute fraud where it is accompanied by some inequitable conduct on the part of the person making it which induces the other party to rely and act thereon.[1] Much depends upon whether the parties deal on equal terms.[2] Thus, relief may be granted because of such a misrepresentation where there is a relation of trust and confidence between the parties[3] or where the speaker has, or professes to have, superior knowledge of the law.[4] Hence, the misrepresentation is actionable where one who personally knows the law deceives another by misrepresenting the law[5] or, knowing such other to be ignorant of it, takes advantage through such ignorance;[6] or where the person to whom the representations are made relies upon the supposed superior knowledge and experience of the other party and on the statement that it is unnecessary or inadvisable to consult a lawyer;[7] or where the representor is a long-time resident of the state and is presumed to know its laws and knows that the representee is new in the state.[8] As one court has summarized it, the "relationship exception" to the general rule that statements of a legal opinion are not actionable in fraud applies if: (1) the parties are in a fiduciary relationship; (2) the party making the statement is a lawyer and the circumstances require him or her to divulge all the information which he or she

possessed to the plaintiff; or (3) the party making the statement is a lawyer and knew that the plaintiff was relying upon him or her as one learned in the law.[9] As formulated by another court, the rule is that statements which might ordinarily be classified as nonactionable legal opinions are actionable as a fraud claim where: (1) a party with superior knowledge takes advantage of another's ignorance of the law to deceive him or her by studied concealment or misrepresentation, (2) there is a fiduciary relationship between the parties, and (3) misrepresentations involving a point of law are intended to be misrepresentations of fact and are understood as such.[10] It has also been said that a false opinion of the law, if represented as a sincere opinion, may, as any other opinion, give rise to a fraud claim if it is reasonably relied upon by the other party.[11]

Footnotes

1 Cucchiaro v. Cucchiaro, 165 Misc. 2d 134, 627 N.Y.S.2d 224 (Sup 1995); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939); Rice v. Press, 117 Vt. 442, 94 A.2d 397 (1953).

2 State v. Edwards, 178 Minn. 446, 227 N.W. 495, 65 A.L.R. 1253 (1929); Hartley Realty Co. v. Casady, 332 S.W.2d 291 (Mo. Ct. App. 1960); Rice v. Press, 117 Vt. 442, 94 A.2d 397 (1953).

3 Bowman v. City of Indianapolis, 133 F.3d 513 (7th Cir. 1998) (applying Indiana Law); Loringer v. Kaplan, 179 Neb. 215, 137 N.W.2d 716 (1965); In re Levy's Estate, 19 A.D.2d 413, 244 N.Y.S.2d 22 (1st Dep't 1963).

4 Bowman v. City of Indianapolis, 133 F.3d 513 (7th Cir. 1998) (applying Indiana law); Sawyer v. Pierce, 580 S.W.2d 117 (Tex. Civ. App. Corpus Christi 1979), writ refused n.r.e., (July 18, 1979); Rice v. Press, 117 Vt. 442, 94 A.2d 397 (1953).
A misrepresentation of the law may be actionable as fraud where it is made by an attorney who thereby induces reliance. Bowman v. City of Indianapolis, 133 F.3d 513 (7th Cir. 1998) (applying Indiana law).

5 Moody v. Stem, 214 S.C. 45, 51 S.E.2d 163 (1948); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939); Madison Trust Co. v. Helleckson, 216 Wis. 443, 257 N.W. 691, 96 A.L.R. 992 (1934).

6 Penn Mut. Life Ins. Co. v. Nunnery, 176 Miss. 197, 167 So. 416 (1936); Hartley Realty Co. v. Casady, 332 S.W.2d 291 (Mo. Ct. App. 1960); Moody v. Stem, 214 S.C. 45, 51 S.E.2d 163 (1948).

7 Fawcett v. Sun Life Assur. Co. of Canada, 135 F.2d 544, 153 A.L.R. 533 (C.C.A. 10th Cir. 1943); Emerson-Brantingham Implement Co. v. Anderson, 58 Mont. 617, 194 P. 160 (1920); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939).

8 Graves v. Cupic, 75 Idaho 451, 272 P.2d 1020 (1954) (overruled on other grounds by, Benz v. D.L. Evans Bank, 152 Idaho 215, 268 P.3d 1167 (2012)) (license requirements of business being sold).

9 Brodeur v. American Home Assur. Co., 169 P.3d 139 (Colo. 2007).

10 BP America Production Co. v. Marshall, 288 S.W.3d 430 (Tex. App. San Antonio 2008), review granted, (Oct. 1, 2010) and judgment rev'd on other grounds, 342 S.W.3d 59 (Tex. 2011).

11 AIU Ins. Co. v. Deajess Medical Imaging, P.C., 24 Misc. 3d 161, 882 N.Y.S.2d 812 (Sup 2009).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 104

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

D. Matters of Law

2. Exceptions to Rule of Nonliability

§ 104. Mixed law and fact; factual statement regarding legal matters

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 10

A representation of mixed law and fact may constitute the basis for an action in fraud[1] if it amounts to an implied assertion that facts exist that justify the conclusion of law which is expressed and the other party would ordinarily have no knowledge of the facts.[2] Moreover, while misstatements of law alone will not generally constitute fraud, they may, when such misstatements are accompanied by concealment or misrepresentation of facts, be made the basis of a charge of fraud.[3]

Observation:

A statement referring to the occurrence of a specific legal event is factual, for the purpose of a fraudulent misrepresentation claim, only if the event has already occurred or is presently occurring and if it goes beyond opinion, conjecture, speculation, and prediction.[4]

Footnotes

1 Cucchiaro v. Cucchiaro, 165 Misc. 2d 134, 627 N.Y.S.2d 224 (Sup 1995) (false mixed statement of fact as to what the law is or whether it is applicable); Goerig v. Elliott, 27 Wash. 2d 600, 179 P.2d 320 (1947).
Since a misrepresentation as to the law may give rise to an action for fraud, so may a misrepresentation as to a mixed question of fact and law, such as eligibility for reimbursement under the no-fault insurance laws. AIU Ins. Co. v. Deajess Medical Imaging, P.C., 24 Misc. 3d 161, 882 N.Y.S.2d 812 (Sup 2009).

2 Hoyt Properties, Inc. v. Production Resource Group, L.L.C., 736 N.W.2d 313 (Minn. 2007).
Where the facts upon which a statement of law is based are misrepresented, there may be actionable fraud. Sorensen v. Gardner, 215 Or. 255, 334 P.2d 471 (1959).

3 Sorensen v. Gardner, 215 Or. 255, 334 P.2d 471 (1959); Goerig v. Elliott, 27 Wash. 2d 600, 179 P.2d 320 (1947).

4 In re Midway Airlines, Inc., 180 B.R. 851 (Bankr. N.D. Ill. 1995) (applying Illinois law).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 105

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

D. Matters of Law

2. Exceptions to Rule of Nonliability

§ 105. Foreign law; law of another state

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 10

A.L.R. Library

Misrepresentation as to matters of foreign law as actionable, 24 A.L.R.2d 1039

As a general rule, representations as to the law of a foreign state are regarded as representations of fact. A misrepresentation as to that law is therefore a fraud.[1] This rule has been applied, for instance, to misrepresentations of the foreign law of insurance,[2] of foreign automobile registration law,[3] and of foreign irrigation law.[4] Nevertheless, in some jurisdictions, the actionability of the representations may be regarded as limited to those made in bad faith.[5]

Reminder:

Even where a legal opinion is regarded as such, it may still be actionable where it misrepresents the facts on which it is based or implies the existence of facts which are nonexistent.[6]

Footnotes

1 Bowman v. City of Indianapolis, 133 F.3d 513 (7th Cir. 1998) (applying Indiana law); Hembry v. Parreco, 81 A.2d 77, 24 A.L.R.2d 1034 (Mun. Ct. App. D.C. 1951); Travelers' Protective Ass'n of America v. Smith, 183 Ind. 59, 107 N.E. 283 (1914); State v. Edwards, 178 Minn. 446, 227 N.W. 495, 65 A.L.R. 1253 (1929); Arroyo Shrimp Farm, Inc. v. Hung Shrimp Farm, Inc., 927 S.W.2d 146 (Tex. App. Corpus Christi 1996).

2 Rauen v. Prudential Ins. Co. of America, 129 Iowa 725, 106 N.W. 198 (1906).

3 Hembry v. Parreco, 81 A.2d 77, 24 A.L.R.2d 1034 (Mun. Ct. App. D.C. 1951).

4 Epp v. Hinton, 91 Kan. 513, 138 P. 576 (1914), opinion modified on other grounds on denial of reh'g, Epp v. Hinton, 91 Kan. 919, 139 P. 379 (1914).

5 Miller v. McGinnis, 285 Mich. 28, 280 N.W. 96 (1938).

6 § 104.

End of Document

37 Am. Jur. 2d Fraud and Deceit IV G Refs.

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

A.L.R. Library

A.L.R. Index, Constructive Fraud
A.L.R. Index, Fraud and Deceit
West's A.L.R. Digest, Fraud 27, 28

End of Document

37 Am. Jur. 2d Fraud and Deceit § 137

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 137. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

A.L.R. Library

Remedies for fraud or misrepresentation as to heating or cooling cost of realty purchased, 32 A.L.R.4th 828

Trial Strategy

Misrepresentation in Automobile Sales, 13 Am. Jur. Trials 253

Forms

Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 7 to 64 (Complaint, petition, or declaration—Fraud—Miscellaneous factual circumstances and transactions)

Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 92 to 122 (Complaint, petition, or declaration—Fraud in sale of personal property)

Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 123 to 131 (Complaint—Fraud in securing sales of goods on credit)
Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 132 to 146 (Complaints, petitions, or declarations—Fraud in security transactions)
Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 149 to 156 (Complaint, petition, or declaration—Fraud in sale of real property)

As a general rule, subject to certain exceptions, fraud must relate to a present or preexisting fact and cannot be predicated on representations or statements that involve mere matters of futurity or things to be done or performed in the future.[1] Thus, mere promissory statements or unkept promises cannot be made the basis of fraud.[2] Subject to those limitations, the scope of matters as to which fraudulent misrepresentations may be made is vast. For instance, fraud has been predicated upon—

— representations to investors by the manager of a business regarding his employment history, investment track record, and his personal financial situation.[3]

— representations by the president of a successful bidder, to the effect that the bidder was a small business, made in order to obtain a procurement contract.[4]

— representations by an oil and gas lessee regarding its right to cross surface estate owners' property to reach certain wells.[5]

— a representation that a person has an oral agreement with another which would be unenforceable under the statute of frauds.[6]

— representations to a subcontractor by the owner that the owner has procured and holds a bond guaranteeing the payment by the general contractor of all obligations to the subcontractors.[7]

— a representation as to the annual cost of fuel oil to heat a building.[8]

— allegations by a minority shareholder of the corporation regarding the status of a majority shareholder.[9]

— the use by companies, which are without authority to do business in a state, of names which include the state's name.[10]

CUMULATIVE SUPPLEMENT

Cases:

Laptop consumer failed to allege that there were representations made to him by laptop manufacturer regarding laptop's battery life that would support a claim for a duty to disclose based on partial representation in consumer's action against manufacturer under the California Consumers Legal Remedies Act (CLRA) for fraudulent omission. West's Ann.Cal.Civ.Code § 1770(a)(5, 7, 9). Herron v. Best Buy Co. Inc., 924 F. Supp. 2d 1161 (E.D. Cal. 2013).

[END OF SUPPLEMENT]

Footnotes

1 §§ 84, 85, 86.

2 §§ 87 to 89.

3 Paron Capital Management, LLC v. Crombie, 2012 WL 2045857 (Del. Ch. 2012).

4 Systems Engineering and Sec., Inc. v. Science & Engineering Associations, Inc., 962 So. 2d 1089 (La. Ct. App. 4th Cir. 2007).

5 Kysar v. BP America Production Co., 2012-NMCA-036, 273 P.3d 867 (N.M. Ct. App. 2012).

6 Slonemsky v. Zevin, 239 A.D. 404, 267 N.Y.S. 589 (1st Dep't 1933).

7 Champion Const. & Engineering Co. v. Bush Terminal Bldgs. Co., 275 A.D. 1055, 92 N.Y.S.2d 242 (2d Dep't 1949).

8 Zeliff v. Sabatino, 27 N.J. Super. 13, 98 A.2d 679 (App. Div. 1953), judgment rev'd on other grounds, 15 N.J. 70, 104 A.2d 54 (1954).

9 Tyler v. O'Neill, 994 F. Supp. 603 (E.D. Pa. 1998), aff'd, 189 F.3d 465 (3d Cir. 1999) (applying Pennsylvania law).

10 State v. Saksniit, 69 Misc. 2d 554, 332 N.Y.S.2d 343 (Sup 1972).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 138

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 138. Health, physical condition, or medical treatment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

A.L.R. Library

Medical malpractice: liability based on misrepresentation of the nature and hazards of treatment, 42 A.L.R.4th 543

Modern status of rules as to avoidance of release of personal injury claim on ground of mistake as to nature and extent of injuries, 13 A.L.R.4th 686

Trial Strategy

Unnecessary Surgery—Hysterectomy, 40 Am. Jur. Proof of Facts 3d 1

False statements as to one's own health may be the basis of an action in fraud, and a representation that one is in good health when at the time a person knows he or she is suffering from a medical disorder will support an action in fraud.[1]

A cause of action is recognized for the intentional or negligent communication of a venereal disease under either a general prima facie tort theory or fraud, deceit, and misrepresentation.[2] One court has stated that a person who knows that he or she has

acquired immune deficiency syndrome (AIDS) and misrepresents or conceals this knowledge from a sexual partner who then contracts AIDS as a result of unprotected sex should be liable for injuries sustained by his or her partner.[3]

Representations by third parties other than a physician about one person's health to another person may, under appropriate circumstances, form the basis of an action for fraud, but not if the person to whom the representation is made is unjustified in relying on those representations.[4]

The rules relating to false representations by physicians[5] apply as well to statements by an employer's claim agent for the purpose of procuring a release[6] and to false statements as to the nature of the injury whereby a settlement is procured, made by the agent of the person responsible for the injury.[7]

Footnotes

1 Cohen v. Kahn, 263 A.D. 728, 30 N.Y.S.2d 875 (2d Dep't 1941).

2 Doe v. Roe, 157 Misc. 2d 690, 598 N.Y.S.2d 678 (J. Ct. 1993).

3 J.B. v. Bohonovsky, 835 F. Supp. 796, 28 Fed. R. Serv. 3d 468 (D.N.J. 1993).

4 Doe v. Dilling, 228 Ill. 2d 324, 320 Ill. Dec. 807, 888 N.E.2d 24 (2008) (plaintiff's claim that the parents of plaintiff's fiance had misrepresented to her that the fiance suffered from heavy-metal poisoning and Lyme disease, when the fiance had allegedly been diagnosed with AIDS, and that plaintiff reasonably relied on those representations in delaying HIV testing).

5 § 139.

6 Scheer v. Rockne Motors Corporation, 68 F.2d 942 (C.C.A. 2d Cir. 1934); Graham v. Atchison, T. & S.F. Ry. Co., 176 F.2d 819 (9th Cir. 1949); Duncan v. Texas Employers' Ins. Ass'n, 105 S.W.2d 403 (Tex. Civ. App. San Antonio 1937), writ dismissed.
As to false representations by physicians, generally, see § 139.

7 Scheer v. Rockne Motors Corporation, 68 F.2d 942 (C.C.A. 2d Cir. 1934).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 139

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 139. Health, physical condition, or medical treatment—Statements by physicians and hospitals

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

A.L.R. Library

Liability of Hospice in Tort, in Contract, or Pursuant to Statute, for Maltreatment or Mistreatment of Patient, 95 A.L.R.6th 479

Liability of Hospice in Tort, in Contract, or Pursuant to Statute, for Maltreatment or Mistreatment of Patient, 95 A.L.R.6th 479

Medical malpractice: liability based on misrepresentation of the nature and hazards of treatment, 42 A.L.R.4th 543

Modern status of rules as to avoidance of release of personal injury claim on ground of mistake as to nature and extent of injuries, 13 A.L.R.4th 686

Trial Strategy

Unnecessary Surgery—Hysterectomy, 40 Am. Jur. Proof of Facts 3d 1

Whether fraud may be based on statements by a physician to an injured person as to the duration of the injured person's injuries generally depends on whether such statements are intended or understood to be mere expressions of opinion upon which the

person to whom they are made has no right to rely, or whether it was intended that they should be received, and whether they were received, as statements of fact.[1] A physician has a duty not to defraud a patient by intentionally misrepresenting the number of required treatments although this duty does not arise by virtue of the physician's specialized expertise or status as professional.[2] However, a physician's representations as to the expected result of an operation does not support a claim of fraud, absent evidence that the physician did not intend to accomplish the exact result the physician stated.[3]

An action for fraud may be stated where a physician misrepresents the results of surgery performed by the physician.[4] Where a patient has a cause of action against a physician for negligence or malpractice and is deceived by intentional and knowing lies and fraud of the physician to the extent that the patient, in reliance on the fraudulent concealment by the physician, does not bring an action for malpractice within the period of the applicable statute of limitations, the patient may maintain an action for fraud against the physician, not on account of the original negligence or malpractice, but on account of the fraud of the physician that deceived the patient with the consequence that the time bar ran against the original action.[5] It has been held in this regard that in order to have a separate cause of action for fraud based upon a physician's concealment of the physician's own malpractice, the medical malpractice plaintiff must show that the personal injuries caused by the fraud were different from those caused by the malpractice.[6]

Where a physician knowingly and intentionally represents that the physician can administer safely a substance that in fact can be administered only under restrictions and controls of a state or federal authority, and the physician administers that substance without a requisite permit and without informing the patient of the restrictions and dangers, the patient can maintain an action for fraud, as well as malpractice.[7] Similarly, an individual treated by a person engaged in the unlicensed practice of dentistry may base a cause of action for fraud on such person's material false representations or concealment of a material existing fact.[8] However, there can be no action for fraud against a hospital or physicians in the absence of a material misrepresentation of fact.[9]

Footnotes

1 Tulsa City Lines v. Mains, 107 F.2d 377 (C.C.A. 10th Cir. 1939); Conklin v. Missouri Pac. R. Co., 331 Mo. 734, 55 S.W.2d 306 (1932).

2 Boggs v. Bosley Medical Institute, Inc., 228 Ga. App. 598, 492 S.E.2d 264 (1997).

3 Stone v. Foster, 106 Cal. App. 3d 334, 164 Cal. Rptr. 901 (3d Dist. 1980).

4 Nutt v. Carson, 1959 OK 76, 340 P.2d 260 (Okla. 1959).

5 Robinson v. Shah, 23 Kan. App. 2d 812, 936 P.2d 784 (1997).

6 Harkin v. Culleton, 156 A.D.2d 19, 554 N.Y.S.2d 478 (1st Dep't 1990).

7 Nelson v. Gaunt, 125 Cal. App. 3d 623, 178 Cal. Rptr. 167 (1st Dist. 1981).

8 Adames v. Velasquez, 19 Misc. 3d 881, 855 N.Y.S.2d 343 (Sup 2008).

9 Parham v. Florida Health Sciences Center, Inc., 35 So. 3d 920 (Fla. 2d DCA 2010), review dismissed, 38 So. 3d 771 (Fla. 2010).

37 Am. Jur. 2d Fraud and Deceit § 140

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 140. Marriage, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

A.L.R. Library

"Wrongful adoption" causes of action against adoption agencies where children have or develop mental or physical problems that are misrepresented or not disclosed to adoptive parents, 74 A.L.R.5th 1

Sexual partner's tort liability to other partner for fraudulent misrepresentation regarding sterility or use of birth control resulting in pregnancy, 2 A.L.R.5th 301

A promise to marry made by one who knows that a lawful marriage is not possible because a prior marriage remains undissolved is a fraudulent promise.[1] One putative spouse can maintain a cause of action for fraud against the other for allegedly concealing his or her marital status at the time of their purported marriage.[2] It has been said in this regard that a statute barring claims for damages for breach of a promise to marry does not bar a claim for fraud merely because the fraudulent misrepresentation involves an intention to marry.[3] However, where a woman knows that a man who has promised to marry her is already married, and the woman cannot by reason of public policy maintain a contract action for the defendant's breach of the promise to marry, the woman cannot sue in tort for fraud based on the promise to marry.[4]

Footnotes

1 In re Marriage of Buckley, 133 Cal. App. 3d 927, 184 Cal. Rptr. 290 (1st Dist. 1982); Thorpe v. Collins, 245 Ga. 77, 263 S.E.2d 115 (1980).

2 Holcomb v. Kincaid, 406 So. 2d 650 (La. Ct. App. 2d Cir. 1981), writ denied, 410 So. 2d 1136 (La. 1982), reconsideration not considered, 410 So. 2d 1148 (La. 1982) and reconsideration not considered, 412 So. 2d 991 (La. 1982).

3 Turner v. Shavers, 96 Ohio App. 3d 769, 645 N.E.2d 1324 (10th Dist. Franklin County 1994).

4 Thorpe v. Collins, 245 Ga. 77, 263 S.E.2d 115 (1980).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 141

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 141. Conception, birth control, and adoption

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

A.L.R. Library

Sexual partner's tort liability to other partner for fraudulent misrepresentation regarding sterility or use of birth control resulting in pregnancy, 2 A.L.R.5th 301

A father is not permitted to maintain a misrepresentation claim against a mother even if she intentionally misrepresents her ability to conceive.[1] Public policy precludes tort actions to recover compensatory or punitive damages in connection with representations concerning birth control made before or during sexual relationships between consenting adults where the alleged wrong results in the birth of a normal, healthy child.[2] Similarly, public policy precludes a father, who is married to a woman other than the mother at the time of a child's conception, from maintaining an action against the mother for intentional misrepresentation, based on assertions that the father relied on the mother's assurances that she had taken adequate contraceptive measures.[3] Tort liability cannot apply to the choice, however motivated, of whether to conceive or bear a child, and although a defendant may deliberately misrepresent his intentions to a plaintiff in order to persuade her to have an abortion, their procreative decisions are so intensely private that courts will not intervene.[4]

Adoptive parents may recover for an adoption agency's material misrepresentations of fact about a child's history prior to adoption.[5] However, an action for wrongful adoption may not lie where the information provided is sufficient to predict any future health or emotional problems.[6]

Footnotes

1 Moorman v. Walker, 54 Wash. App. 461, 773 P.2d 887 (Div. 1 1989).

2 C.A.M. v. R.A.W., 237 N.J. Super. 532, 568 A.2d 556, 2 A.L.R.5th 1043 (App. Div. 1990).
A man voluntarily cohabiting with a woman cannot maintain a cause of action for fraud against a woman falsely claiming to practice birth control, when the woman became pregnant and delivered a child. Jose F. v. Pat M., 154 Misc. 2d 883, 586 N.Y.S.2d 734 (Sup 1992).

3 Welzenbach v. Powers, 139 N.H. 688, 660 A.2d 1133 (1995).

4 Perry v. Atkinson, 195 Cal. App. 3d 14, 240 Cal. Rptr. 402 (4th Dist. 1987).

5 Mohr v. Com., 421 Mass. 147, 653 N.E.2d 1104, 74 A.L.R.5th 693 (1995); Burr v. Board of County Com'rs of Stark County, 23 Ohio St. 3d 69, 491 N.E.2d 1101, 56 A.L.R.4th 357 (1986); Gibbs v. Ernst, 538 Pa. 193, 647 A.2d 882 (1994).

6 Richard P. v. Vista Del Mar Child Care Service, 106 Cal. App. 3d 860, 165 Cal. Rptr. 370 (2d Dist. 1980).

37 Am. Jur. 2d Fraud and Deceit § 142

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 142. Employment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

A.L.R. Library

Employer's liability, under state law, for fraud or misrepresentation inducing employee to take early retirement, 14 A.L.R.5th 537

Employer's misrepresentation as to prospect, or duration of, employment as actionable fraud, 24 A.L.R.3d 1412

Forms

Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 28 (Complaint, petition, or declaration—For damages—Misrepresentation in soliciting prospective employees)

Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 29 (Complaint, petition, or declaration—For damages—False promise of employment)

An employee states a cause of action for fraud against an employer by alleging that the employee relies to his or her detriment on misinformation supplied by the employer.[1] This rule has been applied with respect to false representations concerning—

— the necessity that am employee on disability leave immediately return to work.[2]

— the length of employment.[3]

— the employer's willingness to pay hourly production workers for all time compensable under the Fair Labor Standards Act.[4] On the other hand, the courts have dismissed fraud claims brought by employees where the employer did not make any actionable misrepresentation[5] or where the employer's statements did not justify a subsequent action taken by the employee and thus did not support the claim for fraud.[6]

In the context of preemployment discussions, a general statement that a company's executives enjoy a stable and secure tenure is neither an actionable misrepresentation nor one upon which an employee can justifiably rely.[7] A representation to a potential employee that the applicant can expect to earn a certain amount per year is insufficient to support a fraud claim where the employee understands that the income figure is based on sales and is not an absolute guarantee.[8] Similarly, a former employee cannot recover for fraudulent misrepresentation for statements as to the employee's future employment status made in connection with the signing of a separation agreement and release where the employee fails to show that the employer promised the employee anything other than consulting services, and it continued to utilize the employee in that capacity.[9]

The general rule that promissory statements do not generally support an action for fraud[10] is followed with respect to promises of employment[11] although there are exceptions with regards to this type of promise.[12] It has been held that liability can not be premised on promises of a job for life with yearly income at a certain level.[13] Similarly, promises as to the management of a plaintiff's pension plan involve promises of future performance and thus do not give rise to liability for tortious misrepresentation.[14] However, promises by an educational institution of employment upon graduation have been treated as actionable.[15]

Footnotes

1 Freedman v. Pearlman, 271 A.D.2d 301, 706 N.Y.S.2d 405 (1st Dep't 2000) (misrepresentations regarding income).

2 Pugh v. Kaiser Aluminum & Chemical Sales, Inc., 369 So. 2d 796 (Ala. 1979).

3 Finch v. Brenda Raceway Corp., 22 Cal. App. 4th 547, 27 Cal. Rptr. 2d 531 (1st Dist. 1994).

4 Anderson v. Sara Lee Corp., 508 F.3d 181 (4th Cir. 2007) (applying North Carolina law).

5 Davis v. Dawson, Inc., 15 F. Supp. 2d 64 (D. Mass. 1998).

6 Glasgow v. Sherwin-Williams Co., 901 F. Supp. 1185 (N.D. Miss. 1995), aff'd, 146 F.3d 867 (5th Cir. 1998); Hayes v. Cleveland Pneumatic Co., 92 Ohio App. 3d 36, 634 N.E.2d 228 (8th Dist. Cuyahoga County 1993).

7 Whelan v. CareerCom Corp., 711 F. Supp. 198 (M.D. Pa. 1989) (applying Pennsylvania law).

8 Wilson v. Popp Yarn Corp., 680 F. Supp. 208 (W.D. N.C. 1988); Penzell v. Taylor, 219 Ill. App. 3d 680, 162 Ill. Dec. 142, 579 N.E.2d 956 (1st Dist. 1991) (particularly where the statement was further conditioned on the executive's best efforts).

9 Horton v. Telxon Corp., 99 Ohio Misc. 2d 83, 716 N.E.2d 786 (C.P. 1999).

10 As to false representations by physicians, generally, see § 139.

11 Scullin v. Newman, 127 Ark. 227, 191 S.W. 922 (1917); Hudson v. Venture Industries, Inc., 147 Ga. App. 31, 248 S.E.2d 9 (1978), judgment aff'd, 243 Ga. 116, 252 S.E.2d 606 (1979).

12 Lewis v. Finetex, Inc., 488 F. Supp. 12 (D.S.C. 1977) (oral promise to hire for 18 months); Payne v. Scholnick, 257 A.D. 923, 12 N.Y.S.2d 242 (4th Dep't 1939) (inducing plaintiff to leave his employment

and enter the defendant's on the assurance that the latter was going to stay in business, whereas he intended to sell out as soon as possible); Mid-West Chevrolet Corp. v. Noah, 1935 OK 665, 173 Okla. 198, 48 P.2d 283 (1935) (automobile dealer's deliberate misrepresentation to a truck purchaser that he would be given certain work with the truck).

13 Barrett v. Independent Order of Foresters, 625 F.2d 73 (5th Cir. 1980) (applying Georgia law).

14 Stoler v. Metropolitan Life Ins. Co., 287 So. 2d 694 (Fla. 3d DCA 1974).

15 Schwitters v. Des Moines Commercial College, 199 Iowa 1058, 203 N.W. 265 (1925) (promise that a commercial school student could complete the course and obtain a position in a certain number of weeks).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 143

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 143. Insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

Trial Strategy

Actions on Life Insurance Policies, 12 Am. Jur. Trials 549

An action in tort may be based upon a misrepresentation that insurance coverage has been effected when no policy or binder has been issued, especially where monthly premiums have been collected and retained on an insurance policy found not to have existed.[1] The act of accepting premiums constitutes a representation by an insurer that a policy is in full force and effect, and such a representation, when made without the corresponding intent to pay the proceeds in the event of a claim and coupled with reliance by the insured, constitutes willful fraud.[2]

Allegations that an insurer had actual knowledge that the life insurance policies it sold insureds violated existing tax law when sold, contrary to the insurer's written and oral representations, sufficiently allege misrepresentation of a material fact, as required to state a fraud claim.[3]

On the other hand, a title insurer is not liable in fraud to an insured purchaser for failing to include coverage for mechanics' liens in an owner's policy where there is no obligation to provide the owner's a policy covering mechanics' liens; there is no misrepresentation about what the policy excludes, either intentionally, recklessly, or otherwise; and the purchasers never express

a desire for a policy that does not exclude mechanics' liens.[4] Moreover, an automobile insurer has no duty independent of the insurance policy to inform the insured of benefits to which he or she might be entitled, and thus, the insurer's failure to disclose does not amount to negligence or silent fraud, where the insured does not claim that the insurer made any specific misrepresentations, and there is no indication that the insurer provided partial, misleading information.[5] Similarly, an insureds' action against a homeowner's insurer under a theory of apparent authority, based on the alleged misrepresentations of an insurance agency with regard to the existence of flood coverage under the policy, is barred by the "duty to read" and "imputed knowledge" doctrines where the alleged misrepresentations were made by the agency to the insureds rather than to the insurer, and the insureds possessed the policy, which directly conflicted with the alleged misrepresentations, well before the loss occurred.[6]

CUMULATIVE SUPPLEMENT

Cases:

Insured, whose premium for long-term care policy increased over 76% after expiration of policy's ten-year rate guarantee rider, did not sufficiently allege that insurer had duty to disclose that it was going to raise future rates far in excess of 20%, and, thus, failed to state claim for fraudulent omissions under Illinois law, since fact that insured's highest level of education was high school and that she had no knowledge related to long-term care insurance did not create any special relationship of trust and confidence, and insurer's statement that it "may" impose rate increase meant that insurer had right to change rates, rather than any half-truth concerning possibility that insurer would change rates. Toulon v. Continental Casualty Company, 877 F.3d 725 (7th Cir. 2017).

Under New York law, to establish a fiduciary duty, as required for negligent misrepresentation claim, an insured must plead some extraordinary circumstance, such as efforts by an insurer to gain the insured's trust or confidence. Paraco Gas Corp. v. Travelers Cas. and Sur. Co. of America, 51 F. Supp. 3d 379 (S.D. N.Y. 2014).

Automobile repair shop failed to adequately allege that insurers had a special relationship with the shop imposing a duty on them to impart correct information to the plaintiff, that the insurers imparted any information to the shop, or that the shop relied on any such information, and thus shop failed to state cause of action for negligent misrepresentation in connection with insurers' alleged unlawful efforts to "steer" insureds with claims for damage to their commercial vehicles away from shop. Pesce Bros., Inc. v. Cover Me Ins. Agency of NJ, Inc., 144 A.D.3d 1120, 43 N.Y.S.3d 85 (2d Dep't 2016).

[END OF SUPPLEMENT]

Footnotes

1 Young v. Carrollton Federal Sav. & Loan Ass'n, 159 Ga. App. 836, 285 S.E.2d 264 (1981).

2 Intercontinental Life Ins. Co. v. Lindblom, 598 So. 2d 886 (Ala. 1992).

3 Zarrella v. Pacific Life Ins. Co., 809 F. Supp. 2d 1357 (S.D. Fla. 2011) (applying Florida law).

4 Clements v. Mississippi Valley Title Ins. Co., 612 So. 2d 1172 (Ala. 1992).

5 Dugan v. State Farm Mut. Auto. Ins. Co., 845 F. Supp. 2d 803 (E.D. Mich. 2012) (applying Michigan law).

6 Mladineo v. Schmidt, 52 So. 3d 1154 (Miss. 2010).

37 Am. Jur. 2d Fraud and Deceit § 144

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 144. Insurance—Fraud by insured or third party

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

Trial Strategy

Actions on Life Insurance Policies, 12 Am. Jur. Trials 549

A bank, operating as a premium finance agency, is liable to an insurer, under a theory of negligent misrepresentation, for incorrectly notifying the insurer that a policy has been cancelled where the bank knows that the statement of cancellation is required by the insurer for a serious purpose; the bank knows that the insurer will rely on the notice of cancellation and will be damaged by its reliance if the notice is either inaccurate or ineffective; and the bank, in assuming the burden of administering the policy, also assumed a correlative duty of accurately informing the insurer of its status.[1]

Fraud has also been predicated on a physician's false representations to an insurer made in medical reports and billings submitted to the insurer by the physician on behalf of the insureds.[2]

In addition, a patient asserts fraud where a physician represents that a form is being signed to determine if there is insurance coverage when in fact the form is submitted to obtain payment[3]

Footnotes

1 Home Mut. Ins. Co. v. Broadway Bank and Trust Co., 100 Misc. 2d 228, 417 N.Y.S.2d 856 (Sup 1979), judgment aff'd, 76 A.D.2d 24, 429 N.Y.S.2d 948 (4th Dep't 1980), order aff'd, 53 N.Y.2d 568, 444 N.Y.S.2d 436, 428 N.E.2d 842, 26 A.L.R.4th 337 (1981).

2 State Farm Fire and Cas. Co. v. Huynh, 92 Wash. App. 454, 962 P.2d 854 (Div. 1 1998).

3 Thomas v. Halstead, 605 So. 2d 1181 (Ala. 1992) (dentist).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 145

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 145. Representations or promises as to improvements

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

Fraud may be established by proof that a purchaser of land, acting as a person of ordinary prudence, has been induced to enter into a contract to buy land by a representation of the vendor, known by the latter to be false, that an improvement has been made or is in existence in the neighborhood of the land at the time of the representation.[1] The fraudulent character of a material misrepresentation of a past or existing fact, made by a vendor and relied on by a purchaser to the purchaser's damage, is not altered by the circumstance that the fact misrepresented is preparatory to an improvement to be made in the future.[2]

A statement by a vendor of the vendor's intention to make improvements on property adjacent to that sold, if a mere promise or expression of opinion as to the future, and made in good faith, is not fraudulent and gives the purchaser no right to rescind merely because such intention or promise is not carried out.[3] However, representations of intention to improve real property where no such intention exists are fraudulent,[4] and therefore, if it appears that the vendor has no intention of making the improvement, a representation by the vendor that the vendor intends to make an improvement in the neighborhood of the land sold will constitute fraud as against a purchaser who, as a person of ordinary prudence, relies on the representation and because of a reliance on the misrepresentations suffers damage.[5] Thus, false representations by one disposing of land of an intention to make improvements that will benefit the property disposed of are generally regarded as ground for rescinding the contract[6] and a good defense to a suit for its specific performance.[7]

Footnotes

1 Pocatello Security Trust Co. v. Henry, 35 Idaho 321, 206 P. 175, 27 A.L.R. 337 (1922); Roberts v. James, 83 N.J.L. 492, 85 A. 244 (N.J. Ct. Err. & App. 1912).
Adjacent landowners who sold a lot to the plaintiffs and represented to them that the cottage obstructing the view of the ocean would be removed were guilty of fraud when the cottage was moved to an adjacent lot and continued to block the plaintiffs' view. Malerba v. Warren, 108 Misc. 2d 785, 438 N.Y.S.2d 936 (Sup 1981), judgment modified on other grounds, 96 A.D.2d 529, 464 N.Y.S.2d 835 (2d Dep't 1983).

2 Pocatello Security Trust Co. v. Henry, 35 Idaho 321, 206 P. 175, 27 A.L.R. 337 (1922); Roberts v. James, 83 N.J.L. 492, 85 A. 244 (N.J. Ct. Err. & App. 1912).

3 Mid-Continent Life Ins. Co. v. Pendleton, 202 S.W. 769 (Tex. Civ. App. San Antonio 1918); Stewart v. Larkin, 74 Wash. 681, 134 P. 186 (1913).
As to statements as to future events, generally, see §§ 84, 85, 86.
As to promises made with intention not to perform, see §§ 94 to 100.

4 Pocatello Security Trust Co. v. Henry, 35 Idaho 321, 206 P. 175, 27 A.L.R. 337 (1922).

5 Roberts v. James, 83 N.J.L. 492, 85 A. 244 (N.J. Ct. Err. & App. 1912).

6 Pocatello Security Trust Co. v. Henry, 35 Idaho 321, 206 P. 175, 27 A.L.R. 337 (1922); Rodgers v. Johnson, 47 S.D. 131, 196 N.W. 295 (1923).

7 Roberts v. James, 83 N.J.L. 492, 85 A. 244 (N.J. Ct. Err. & App. 1912); Mid-Continent Life Ins. Co. v. Pendleton, 202 S.W. 769 (Tex. Civ. App. San Antonio 1918).
As to fraud as defeating specific performance, generally, see Am. Jur. 2d, Specific Performance §§ 63 to 68.

End of Document

37 Am. Jur. 2d Fraud and Deceit § 146

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 146. Representations or promises as to improvements—By vendee or transferee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

If a purchaser, to induce a vendor to make a sale, promises to make certain improvements upon the land or improvements in the neighborhood that would enhance the value of other land of the vendor or that would otherwise benefit the vendor, when the purchaser has no intention of doing so, the vendor may rescind the transaction.[1] However, a mere promise by the vendee in regard to improvements to be located on the property is not fraud unless the promise is a device to accomplish fraud.[2]

Footnotes

1 Braddy v. Elliott, 146 N.C. 578, 60 S.E. 507 (1908).

2 Braddy v. Elliott, 146 N.C. 578, 60 S.E. 507 (1908); Chicago, T. & M.C. Ry. Co. v. Titterington, 84 Tex. 218, 19 S.W. 472 (1892).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 147

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit
George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 147. Purpose for which property is acquired or intended use thereof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

Trial Strategy

Real-Estate Broker's Misrepresentation or Nondisclosure as to Condition or Value of Realty, 39 Am. Jur. Proof of Facts 3d 309

A misstatement or misrepresentation made in the negotiations for the purchase of land as to the use that the purchaser intends to make of the land or the purpose for which the purchaser wants it does not necessarily constitute fraud,[1] especially where the use for a different purpose from that stated does not injuriously affect the vendor by reason of the vendor's ownership of other land in the vicinity.[2] A false statement or representation relating to the purpose for which the purchaser is buying the land or to the use that the purchaser intends to make of it is of no consequence unless it appears that the statement or representation made was material and that the vendor relied upon it and was induced to enter into the contract thereby.[3] However, some courts hold that statements by a purchaser of, or by one similarly acquiring, land as to the use the purchaser intends to make of it are statements of existing facts, and not mere promises of what will be done in the future, and if false and known to be false by the purchaser will warrant the vendor in rescinding the contract of sale if relied on by the vendor to the vendor's damage as, for example, a statement by the purchaser that the purchaser intends to erect dwellings on the property when in fact the purchaser intends to erect a garage.[4] Indeed, many courts take the position that fraud entitling the vendor to rescind may be found from the facts that the purchaser induced the vendor to sell by falsely representing the use for which the purchaser desired the land,

knowing that the sale would not be made if the vendor was aware of the purpose or use for which the purchaser wanted the land, particularly where such use of the land would injure the value of other land in the vicinity.[5]

No charge of fraud will lie where the intended use of property is stated in good faith, but the purchaser afterward changes his or her mind.[6] The mere fact that the purpose of the purchaser is speculation, and that the purchaser intends to make a profit out of the transaction, does not constitute fraud or unfair dealing, for this is frequently the purpose of purchasing property.[7]

Conversely, statements by a vendor or the vendor's agent to the effect that property may be used for a specific purpose when in fact it cannot is evidence of fraud.[8]

CUMULATIVE SUPPLEMENT

Cases:

Under Florida law, defendant engaged in common-law fraud by engaging in scheme involving the unauthorized and unlawful sale of wireless service provider's prepaid airtime minutes; defendant knowingly made false statements to provider's employees in order to coerce them into adding free airtime to prearranged phone numbers, and provider's employees acted upon defendant's false statements and added free airtime minutes to certain phone numbers, which resulted in financial loss to provider. TracFone Wireless, Inc. v. Adams, 98 F. Supp. 3d 1243 (S.D. Fla. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Stackpole v. Hancock, 40 Fla. 362, 24 So. 914 (1898).

2 Parsons v. Detroit & M.R. Co., 122 Mich. 462, 81 N.W. 343 (1899); State v. Blize, 37 Or. 404, 61 P. 735 (1900).

3 Lucas v. Long, 125 Md. 420, 94 A. 12 (1915); Brown v. Honiss, 74 N.J.L. 501, 68 A. 150 (N.J. Ct. Err. & App. 1907).

4 Adams v. Gillig, 199 N.Y. 314, 92 N.E. 670 (1910); Whitcomb v. Moody, 49 S.W.2d 513 (Tex. Civ. App. Waco 1932), writ refused, (July 19, 1932).

5 Brett v. Cooney, 75 Conn. 338, 53 A. 729 (1902); Adams v. Gillig, 199 N.Y. 314, 92 N.E. 670 (1910).

6 Bryan v. Louisville & N.R. Co., 292 Mo. 535, 238 S.W. 484, 23 A.L.R. 537 (1921).

7 Cummins v. Beavers, 103 Va. 230, 48 S.E. 891 (1904).

8 Lepera v. Fuson, 83 Ohio App. 3d 17, 613 N.E.2d 1060 (1st Dist. Hamilton County 1992).

37 Am. Jur. 2d Fraud and Deceit § 148

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 148. Representations to contractor as to amount or character of work, materials, cost, or soil conditions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

Misrepresentations with reference to matters affecting the amount or character of work to be performed under a contract, or the cost or expense of the performance thereof, may constitute the basis for rescission of the contract[1] or for an action for damages in fraud and deceit.[2] This rule would seem to be most frequently applicable to building and construction contracts.[3] While indefinite statements, expressions of opinion, and conjectural views as to the amount of work or materials or the cost thereof are not actionable,[4] statements purporting to be factual and based upon superior knowledge, information, and investigation with respect to the work or materials required may constitute the basis for an action in fraud.[5] A gross underestimate of the amount of work required, even though advanced as approximate only, may be found to be a misrepresentation of fact.[6]

Fraud justifying rescission or damages may be based in a proper case on misrepresentations by an owner to a contractor with respect to conditions below the surface.[7] The complaint is usually based on some inaccuracy or inadequacy in notation on plans, in specifications, in the advertisements for bids, in profile drawings, or in records of soundings or of borings.[8] Although the statement of an opinion as to the existence of certain conditions is not an actionable representation of fact, where the statement may be taken as either one of opinion or one of fact, it is for the jury to decide whether the contractor was warranted in relying upon it as one of fact.[9]

Observation:

The line between the mere presentation of the results of point borings, and the representation of general conditions based on such borings, is crossed where an owner's engineers show profile maps, or notations on plans, purporting to give subsoil conditions in general, and a contractor, under certain circumstances, may get relief on the basis of such a representation where the contractor relied upon it to the contractor's injury.[10]

Footnotes

1 Prest v. Inhabitants of Town of Farmington, 117 Me. 348, 104 A. 521, 2 A.L.R. 1390 (1918); Long v. Inhabitants of Athol, 196 Mass. 497, 82 N.E. 665 (1907).

2 Busch v. Wilcox, 82 Mich. 315, 46 N.W. 940 (1890), aff'd, 82 Mich. 336, 47 N.W. 328 (1890); Sell v. Mississippi River Logging Co., 88 Wis. 581, 60 N.W. 1065 (1894).

3 Am. Jur. 2d, Building and Construction Contracts § 110.

4 Ariss-Knapp Co. v. Sonoma County, 73 Cal. App. 262, 238 P. 752 (1st Dist. 1925).

5 Board of Water Com'rs of City of New London v. Robbins & Potter, 82 Conn. 623, 74 A. 938 (1910).

6 Long v. Inhabitants of Athol, 196 Mass. 497, 82 N.E. 665 (1907).

7 Elkan v. Sebastian Bridge Dist., 291 F. 532 (C.C.A. 8th Cir. 1923); Arthur A. Johnson Corp. v. Com., 318 Mass. 88, 60 N.E.2d 364 (1945).

8 Elkan v. Sebastian Bridge Dist., 291 F. 532 (C.C.A. 8th Cir. 1923); Arthur A. Johnson Corp. v. Com., 318 Mass. 88, 60 N.E.2d 364 (1945).

9 McClung Const. Co. v. Muncy, 65 S.W.2d 786 (Tex. Civ. App. Amarillo 1933), writ dismissed.

10 E. & F. Const. Co. v. Town of Stamford, 114 Conn. 250, 158 A. 551 (1932).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 149

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit
George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 149. Representations as to source or supply of, capacity to produce, or sales commitments regarding, articles

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

Misrepresentations of a seller as to the source of an article and capacity to manufacture it are actionable.[1] Although representations as to supply, productive capacity, and sales commitments regarding articles may, when standing alone, relate to existing facts and be actionable,[2] where the uncommitted capacity and supply are represented to be adequate to provide the plaintiff with a specified quantity of an article every month, apparently for an unlimited period, the representations constitute predictions or expressions of future expectations, or in the alternative, statements promissory in nature insofar as they imply an engagement or intention to maintain for the plaintiff's benefit an uncommitted capacity and supply at the level specified and are therefore not actionable.[3]

Footnotes

1 Tele King Corp. v. Abeles, 282 A.D. 755, 123 N.Y.S.2d 95 (1st Dep't 1953).

2 Channel Master Corp. v. Aluminum Limited Sales, Inc., 2 A.D.2d 933, 156 N.Y.S.2d 585 (3d Dep't 1956).
A statement by a district manager of a tool manufacturer to distributors that the manager had been to the company warehouse and had seen the tools and that there were enough to fill 80% of all orders was sufficient to make out claim for deceit. Nickerson v. Matco Tools Corp., Div. of Jacobs Mfg. Co., 813 F.2d 529 (1st Cir. 1987).
A statement in a project owner's letter to a steel supplier offering to tender direct payments to the supplier upon delivery of the steel to a manufacturer which had contracted to fabricate components for a steel building was not a material misrepresentation required to support a fraudulent inducement claim under

Pennsylvania law; the letter did not misrepresent that the owner guaranteed to satisfy the supplier's invoices if the manufacturer failed to do so but was instead an administrative proposal to streamline payments. EBC, Inc. v. Clark Bldg. Systems, Inc., 618 F.3d 253, 77 Fed. R. Serv. 3d 421 (3d Cir. 2010) (applying Pennsylvania law).

3 Channel Master Corp. v. Aluminum Limited Sales, Inc., 2 A.D.2d 933, 156 N.Y.S.2d 585 (3d Dep't 1956).

End of Document

37 Am. Jur. 2d Fraud and Deceit § 150

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

G. Representations and Statements as to Particular Matters

1. In General

§ 150. Falsely attesting signature; attesting instrument without seeing it signed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Fraud 27, 28

A.L.R. Library

Civil liability of witness falsely attesting signature to document, 96 A.L.R.2d 1346

Misrepresentations as to financial condition or credit of third person as actionable by one extending credit in reliance thereon, 32 A.L.R.2d 184

Fraud may be predicated upon the attesting of a signature, knowing it to be false.[1] Moreover, one who attests an instrument without seeing it signed may be liable in fraud on the basis of an implied misrepresentation where the signature to the instrument is not genuine.[2] Thus, a person who falsely attests that a signature on a document has been made in the person's presence or acknowledged by the signer in the person's presence has been held liable to another who relies on the false attestation and suffers damage thereby.[3] On the other hand, civil liability predicated upon the act of a witness in falsely attesting a signature to a document has been denied.[4]

Footnotes

1 Mendenhall v. Stewart, 18 Ind. App. 262, 47 N.E. 943 (1897).

2 McCray Refrigerator Co. v. Uramoto, 79 Nev. 294, 382 P.2d 600, 96 A.L.R.2d 1339 (1963).

3 McCray Refrigerator Co. v. Uramoto, 79 Nev. 294, 382 P.2d 600, 96 A.L.R.2d 1339 (1963).

4 Motor Credit Co. v. Tremper, 121 N.J.L. 91, 1 A.2d 301 (N.J. Sup. Ct. 1938) (complaint did not contain well pleaded charge of fraud).

End of Document

58 Am. Jur. 2d Notice Summary

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

Correlation Table

Summary

Scope:
This article discusses the general concept of notice, including actual and constructive notice, duty to inquire, statutory notice, notice required by contract, service of notice, and practice and procedure as it relates to notice.

Treated Elsewhere:
Acknowledgments, generally, see Am. Jur. 2d, Acknowledgments §§ 1 et seq.

As to notice in particular situations, see more specific topics; for example:

Collateral attack on judgment due to irregularities in notice, see Am. Jur. 2d, Judgments §§ 758 to 761

Due process as requiring notice, see Am. Jur. 2d, Constitutional Law §§ 983 to 996

Imputation of agent's knowledge to principal, see Am. Jur. 2d, Agency §§ 273 to 284

Imputation of officer's knowledge to bank, see Am. Jur. 2d, Banks and Financial Institutions §§ 395 to 401

Judicial notice, see Am. Jur. 2d, Evidence §§ 24 to 170

Lis pendens, see Am. Jur. 2d, Lis Pendens §§ 1 et seq.

Notice and proof of loss to insurance company, see Am. Jur. 2d, Insurance §§ 1315 to 1383

Notice as between landlord and tenant, see Am. Jur. 2d, Landlord and Tenant §§ 1 et seq.

Notice as between vendor and purchaser, see Am. Jur. 2d, Vendor and Purchaser §§ 1 et seq.

Notice of administrative hearing, see Am. Jur. 2d, Administrative Law §§ 288, 289

Notice of appeal, see Am. Jur. 2d, Appellate Review §§ 292 to 315

Notice of claim, see Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 598 to 704

Notice of elections, see Am. Jur. 2d, Elections §§ 275 to 278

Process and service of process, generally, Am. Jur. 2d, Process §§ 1 et seq.

Qualifications of newspapers to publish legal notices, see Am. Jur. 2d, Newspapers, Periodicals, and Press Associations §§ 29 to 47

Record as constructive notice, see Am. Jur. 2d, Records and Recording Laws §§ 71 to 116

Records as notice, generally, see Am. Jur. 2d, Records and Recording Laws § 6

Research References:

Westlaw Databases

American Law Reports (ALR)
West's A.L.R. Digest (ALRDIGEST)
American Jurisprudence 2d (AMJUR)
American Jurisprudence Legal Forms 2d (AMJUR-LF)
American Jurisprudence Proof of Facts (AMJUR-POF)
American Jurisprudence Pleading and Practice Forms Annotated (AMJUR-PP)
United States Code Annotated (USCA)

End of Document

58 Am. Jur. 2d Notice I Refs.

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

I. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Notice 1, 9, 12

A.L.R. Library

A.L.R. Index, Constructive Notice
A.L.R. Index, Notice and Knowledge
West's A.L.R. Digest, Notice 1, 9, 12

Forms

Am. Jur. Legal Forms 2d § 186:5
Am. Jur. Pleading and Practice Forms, Notice § 6

End of Document

58 Am. Jur. 2d Notice § 1

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

I. In General

§ 1. Generally; definitions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 1

Forms

Am. Jur. Legal Forms 2d § 186:5 (Notice—General form)
Am. Jur. Pleading and Practice Forms, Notice § 6 (Notice—General form)

"Notice" is defined as information, an advisement, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his or her interests are involved or informing him or her of some fact that it is his or her right to know and the duty of the notifying party to communicate.[1] Simply stated, "notice" may be the equivalent of information, intelligence, or knowledge.[2] The term "notice" of itself imports that the information given thereby is to be directed to someone who is to act or refrain from acting in consequence of the information contained in the notice.[3] No one needs notice of what he or she already knows[4] or, more accurately, actual knowledge supersedes the requirement of notice.[5]

Although actual notice may approximate knowledge, there can be actual notice without knowledge.[6]

Where notice is governed by statute,[7] the meaning given by the courts is controlled largely by the context, purpose, and intent of the statute.[8]

Footnotes

1 State v. Lee, 787 So. 2d 1020 (La. Ct. App. 4th Cir. 2001).

2 Colorado Interstate Gas Co. v. Dufield, 9 Kan. App. 2d 428, 681 P.2d 25 (1984).

3 Woodman Partners v. Sofa U Love, 94 Cal. App. 4th 766, 114 Cal. Rptr. 2d 566 (2d Dist. 2001).

4 Skelly Oil Co. v. Johnson, 209 Ark. 1107, 194 S.W.2d 425 (1946).

5 Gorman v. TPA Corp., 419 S.W.2d 722 (Ky. 1967).

6 Rogers v. City of Evansville, 437 N.E.2d 1019 (Ind. Ct. App. 1982).
Actual notice is discussed in § 4.

7 As to notice required by statute, see § 9.

8 Lamke v. Lynn, 680 S.W.2d 285 (Mo. Ct. App. E.D. 1984).

End of Document

58 Am. Jur. 2d Notice § 2

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

I. In General

§ 2. Purpose, nature, and sufficiency of notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 1, 9, 12

The concept of notice concerns notions of fundamental fairness, affording parties the opportunity to be apprised when their interests are implicated in a given matter, and notice is not a rigid concept.[1] The principal purpose of a notice is to alert a party to the nature and substance of the action against that party.[2] The notice ensures that each party is provided adequate opportunity to prepare and thereafter properly advocate its position, ultimately exposing all relevant factors from which the finder of fact may make an informed judgment.[3] Indeed, notice of an impending judicial action and the opportunity to be heard prior to that action are fundamental principles of justice.[4] Also, the purpose of a notice in a disciplinary action is to advise the party of the law and fairly indicate the legal theory under which such facts are claimed to constitute a violation of the law.[5]

Commonly understood, the function of a notice is to provide forewarning of an event.[6] Even if the information is conveyed in a way other than formal notice, the objective is attained.[7] Accordingly, a person is deemed to have notice when he or she has actual knowledge or when, from all known facts and circumstances at the time in question, he or she has reason to know that it exists.[8]

A notice is not clear unless its meaning can be apprehended without explanation or argument.[9] "Reasonable notice" is notice fairly to be expected or required under the particular circumstances.[10] Reasonable notice ordinarily requires the opportunity to present claims or defenses.[11] "Adequate notice" is notice that is clear and unambiguous to the average citizen.[12] "Adequate notice" is defined as notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of an action and afford them the opportunity to present their objections.[13] "Adequate notice" is notice that is reasonably calculated to give the defendant actual notice of the issue to be decided at the hearing.[14] A fundamental element of adequate notice is that the allegations must be stated with particularity, giving notice of specific grounds and factual claims.[15]

When an actual notice of an action is given, an irregularity in the content of the notice or the manner in which it is given does not render the notice inadequate.[16] A notice should not be held ineffective when in substantial compliance with the law.[17]

Footnotes

1 Middlesex Mut. Assur. Co. v. Komondy, 120 Conn. App. 117, 991 A.2d 587 (2010).

2 Squibb v. State ex rel. Davis, 860 N.E.2d 904 (Ind. Ct. App. 2007).

3 Everett v. Parker, 2005 PA Super 404, 889 A.2d 578 (2005).

4 People v. Anderson, 352 Ill. App. 3d 934, 288 Ill. Dec. 350, 817 N.E.2d 1000 (1st Dist. 2004).

5 Lawendy v. Connecticut Bd. of Veterinary Medicine, 109 Conn. App. 113, 951 A.2d 13 (2008).

6 Gray v. American Exp. Co., 743 F.2d 10 (D.C. Cir. 1984).

7 In re Marriage of Garde, 118 Ill. App. 3d 303, 73 Ill. Dec. 816, 454 N.E.2d 1065 (5th Dist. 1983).

8 Michelin Tires (Canada) Ltd. v. First Nat. Bank of Boston, 666 F.2d 673, 32 U.C.C. Rep. Serv. 657 (1st Cir. 1981); Western Bank v. RaDec Const. Co., Inc., 382 N.W.2d 406, 42 U.C.C. Rep. Serv. 1340 (S.D. 1986).

9 State v. Doe, 147 Idaho 542, 211 P.3d 787 (Ct. App. 2009).

10 Cascade Auto Glass, Inc. v. Progressive Cas. Ins. Co., 135 Wash. App. 760, 145 P.3d 1253 (Div. 2 2006).

11 LaPointe v. Board of Educ. of Town of Winchester, 274 Conn. 806, 878 A.2d 1154, 200 Ed. Law Rep. 790 (2005).

12 Long v. McAllister-Long, 221 S.W.3d 1 (Tenn. Ct. App. 2006).

13 Trivette v. Trivette, 162 N.C. App. 55, 590 S.E.2d 298 (2004).

14 Bennett v. Town of Hampstead, 157 N.H. 477, 953 A.2d 388 (2008).

15 In re A.R., 2010 ND 84, 781 N.W.2d 644 (N.D. 2010).

16 Farrell v. Brown, 111 Idaho 1027, 729 P.2d 1090 (Ct. App. 1986).
As to actual notice, see §§ 4, 5.

17 Plunkett v. Dep't. of Transportation, 286 Mich. App. 168, 779 N.W.2d 263 (2009), appeal denied, 488 Mich. 1055, 794 N.W.2d 831 (2011).

End of Document

58 Am. Jur. 2d Notice § 3

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

I. In General

§ 3. Notice to one person imputed to another

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 1

A.L.R. Library

Sufficiency of notice to public works contractor on United States project under Miller Act (40 U.S.C.A. sec. 270b(a)), 98 A.L.R. Fed. 778

Knowledge or notice acquired by an agent while acting within the scope of his or her authority regarding something over which his or her authority extends is chargeable to the principal.[1] Similarly, where a director or officer of a bank knows certain facts, that knowledge generally will be imputed to the bank,[2] and notice or knowledge of an attorney, acquired while acting within the scope of employment, is imputed to the client.[3]

Where two persons enter into a joint transaction for the benefit of both, notice of a fact to one of them is also notice to both as far as that transaction is concerned.[4] This is true in the case of joint contractors,[5] partners, or joint venturers regarding a transaction for business purposes.[6]

Footnotes

1 Am. Jur. 2d, Agency §§ 273 to 284.

2 Am. Jur. 2d, Banks and Financial Institutions §§ 395 to 401.

3 Am. Jur. 2d, Attorneys at Law § 153.

4 Sweet Sixteen Co. v. Sweet "16" Shop, 15 F.2d 920 (C.C.A. 8th Cir. 1926).

5 Fleisher Engineering & Construction Co. v. U.S., for Use and Benefit of Hallenbeck, 311 U.S. 15, 61 S. Ct. 81, 85 L. Ed. 12 (1940).

6 Mileasing Co. v. Hogan, 87 A.D.2d 961, 451 N.Y.S.2d 211 (3d Dep't 1982).

End of Document

58 Am. Jur. 2d Notice II A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Notice 1.6 to 3, 5

A.L.R. Library

A.L.R. Index, Constructive Notice
A.L.R. Index, Notice and Knowledge
West's A.L.R. Digest, Notice 1.6 to 3, 5

Trial Strategy

Constructive Notice to Landlord of Unsafe Condition on Leased Premises, 44 Am. Jur. Proof of Facts 3d 449

Forms

Am. Jur. Pleading and Practice Forms, Notice § 35

End of Document

58 Am. Jur. 2d Notice § 4

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

A. In General

§ 4. Generally; actual notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 1.6

The law recognizes both constructive and actual notice.[1] Constructive notice and actual notice are not one and the same,[2] and actual knowledge is superior to constructive notice.[3] "Actual notice" is defined as notice expressly and actually given while "constructive notice" is defined as information or knowledge of a fact imputed by law to a person, although he or she may not actually have it, because he or she could have discovered the fact by proper diligence, and his or her situation was such as to cast upon him or her the duty of inquiring into it.[4] "Actual notice" is defined as knowledge of facts and circumstances sufficiently pertinent in character to enable reasonably cautious and prudent persons to investigate and ascertain as to the ultimate facts.[5] A notice is regarded in law as "actual notice" where the person sought to be charged therewith either knows of the existence of the particular fact in question or is conscious of having the means of knowing it even though such means may not be employed by him or her.[6] "Actual notice" has also been defined as that which is directly and personally given to the one to be notified.[7] Actual notice rests upon personal information or knowledge[8] while constructive notice is notice that the law imputes to a person not having personal information or knowledge.[9] Indeed, "actual notice" is synonymous with knowledge.[10] Actual notice embraces those things that a reasonably diligent inquiry and the exercise of the means of information at hand would disclose.[11]

Equity recognizes both actual and implied, or inquiry, notice.[12] "Inquiry notice" is that notice that a plaintiff would have possessed after due investigation.[13] "Inquiry notice," which is recognized as a form of actual notice, is knowledge of facts and circumstances sufficiently pertinent in character to enable reasonably cautious and prudent persons to investigate and ascertain as to ultimate facts.[14] Under the doctrine of inquiry notice, a good-faith failure to seek out the ultimate facts constitutes no defense, and a party asserting this argument is still chargeable with the undiscovered facts as long as a reasonably diligent inquiry would have uncovered them.[15]

Footnotes

1 Symons Corp. v. Tartan-Lavers Delray Beach, Inc., 456 So. 2d 1254 (Fla. Dist. Ct. App. 4th Dist. 1984); Bank of New York v. Nally, 820 N.E.2d 644 (Ind. 2005); Crown Coin Meter Co. v. Park P, LLC, 934 N.E.2d 142 (Ind. Ct. App. 2010); Lamke v. Lynn, 680 S.W.2d 285 (Mo. Ct. App. E.D. 1984); Blevins v. Johnson County, 746 S.W.2d 678 (Tenn. 1988); Cambridge Production, Inc. v. Geodyne Nominee Corp., 292 S.W.3d 725 (Tex. App. Amarillo 2009).

2 Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005).

3 Cadlerock Properties Joint Venture, L.P. v. Town of Ashford, 98 Conn. App. 556, 909 A.2d 964 (2006).

4 Doe ex rel. Brown v. Pontotoc County School Dist., 957 So. 2d 410, 221 Ed. Law Rep. 974 (Miss. Ct. App. 2007).

5 Colorado Interstate Gas Co. v. Dufield, 9 Kan. App. 2d 428, 681 P.2d 25 (1984); Longmire v. The Kroger Co., 134 S.W.3d 186 (Tenn. Ct. App. 2003).

6 In re C.J.G., 2006 WL 1097386 (Mo. Ct. App. S.D. 2006), transferred to Mo. S. Ct., 219 S.W.3d 244 (Mo. 2007); Blind Tiger, LLC v. City of Charleston, 366 S.C. 182, 621 S.E.2d 361 (Ct. App. 2005).

7 Crown Coin Meter Co. v. Park P, LLC, 934 N.E.2d 142 (Ind. Ct. App. 2010).

8 Jasek v. Texas Dept. of Family and Protective Services, 348 S.W.3d 523 (Tex. App. Austin 2011).

9 Jasek v. Texas Dept. of Family and Protective Services, 348 S.W.3d 523 (Tex. App. Austin 2011).

10 Blind Tiger, LLC v. City of Charleston, 366 S.C. 182, 621 S.E.2d 361 (Ct. App. 2005).

11 West v. Maintenance Tool and Supply Co., Inc., 89 S.W.3d 96 (Tex. App. Corpus Christi 2002).

12 Myers v. LaCasse, 176 Vt. 29, 2003 VT 86A, 838 A.2d 50 (2003).

13 Doe v. Catholic Bishop for Diocese of Memphis, 306 S.W.3d 712 (Tenn. Ct. App. 2008).

14 Holiday Hospitality Franchising, Inc. v. States Resources, Inc., 232 S.W.3d 41 (Tenn. Ct. App. 2006).

15 Holiday Hospitality Franchising, Inc. v. States Resources, Inc., 232 S.W.3d 41 (Tenn. Ct. App. 2006).

End of Document

58 Am. Jur. 2d Notice § 5

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

A. In General

§ 5. Express or implied actual notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 1.6, 2, 3

"Actual notice" can be divided into two categories: (1) express, which includes direct communication,[1] and (2) implied, which is inferred from the fact that the person charged had the means of obtaining knowledge that he or she did not use.[2]

Express notice is actual notice consisting of knowledge brought personally home while implied notice is knowledge imputed and charged because of the surrounding facts and circumstances, which would lead one to discover or learn the fact by exercising ordinary care.[3] "Implied notice," which is sometimes called "implied actual notice," is notice that is inferred from facts that a person had a means of knowing and that is thus imputed to that person; implied notice is also actual notice of facts or circumstances that, if properly followed up, would have led to knowledge of the particular fact in question.[4] "Implied actual notice," or notice that is inferred from the fact that a person had means of knowledge that it was his or her duty to use and that he or she did not use, is based upon the principle that a person has no right to shut his or her eyes or ears to avoid information, and then say that he or she has no notice, and that it will not suffice the law to remain willfully ignorant of a thing readily ascertainable by whatever party puts him or her on inquiry when the means of knowledge is at hand.[5] "Implied notice" is that notice that is inferred or imputed to a party by reason of his or her knowledge of facts or circumstances collateral to the main fact, of such a character as to put him or her upon inquiry, and that, if the inquiry were followed up with due diligence, would lead him or her directly to the knowledge of the main fact.[6]

The importance of the classification of notice is that constructive notice is a legal inference[7] while implied actual notice is an inference of fact.[8]

Footnotes

1 Rutland v. Georgia Power Co., 286 Ga. App. 14, 648 S.E.2d 436 (2007); Crown Coin Meter Co. v. Park P, LLC, 934 N.E.2d 142 (Ind. Ct. App. 2010).

2 Crown Coin Meter Co. v. Park P, LLC, 934 N.E.2d 142 (Ind. Ct. App. 2010).

3 Lamke v. Lynn, 680 S.W.2d 285 (Mo. Ct. App. E.D. 1984).

4 National Restoration Co. v. Merit General Contractors, Inc., 41 Kan. App. 2d 1010, 208 P.3d 755 (2009), review denied, (Mar. 31, 2010).

5 Sheres v. Genender, 965 So. 2d 1268 (Fla. Dist. Ct. App. 4th Dist. 2007).

6 Sledge v. State, 312 Ga. App. 97, 717 S.E.2d 682 (2011).
For discussion of the duty to inquire, see §§ 12 to 26.

7 § 6.

8 Symons Corp. v. Tartan-Lavers Delray Beach, Inc., 456 So. 2d 1254 (Fla. Dist. Ct. App. 4th Dist. 1984).

End of Document

58 Am. Jur. 2d Notice § 6

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

A. In General

§ 6. Constructive notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 5

Trial Strategy

Constructive Notice to Landlord of Unsafe Condition on Leased Premises, 44 Am. Jur. Proof of Facts 3d 449

Forms

Am. Jur. Pleading and Practice Forms, Notice § 35 (Instruction to jury—Constructive notice as equivalent of actual notice—Continued existence of condition causing injury)

"Constructive notice" is information or knowledge of a fact imputed by law to a person, although he or she may not actually have it, because he or she could have discovered the fact by proper diligence, and his or her situation was such as to cast upon him or her the duty of inquiring into it.[1] It is notice arising by a presumption of law from the existence of facts and circumstances that a party had a duty to take notice of; it is notice presumed by law to have been acquired by a person and thus imputed to that person.[2] "Constructive notice" refers to that which the law regards as sufficient to give notice and is regarded as a substitute for actual notice or knowledge;[3] it is a legal inference that substitutes for actual notice.[4] "Constructive notice" is notice that the law imputes to a person not having personal information or knowledge.[5] In fact, constructive notice is neither notice nor

knowledge, and the term "constructive" is the mere trademark of a fiction resorted to for the promotion of sound policy under certain circumstances by treating legal rights and interests of parties as though they had actual notice or knowledge.[6]

Constructive notice is meant to protect innocent persons about to engage in lawful transactions[7] by encouraging diligence in protecting one's rights and preventing fraud.[8] It is based on the premise that citizens have no right to shut their eyes or ears to avoid information and then say that they had no notice.[9]

A person is charged with constructive notice of the actual knowledge that could have been acquired by examining public records.[10] Constructive notice from a record is wholly a creature of statute, and no record will operate to give constructive notice unless such effect is given such record by statute.[11]

A person is chargeable with constructive notice of any fact that would have been disclosed by a reasonably diligent inquiry if circumstances are such as to indicate to a person of reasonable prudence and caution the necessity of making inquiry to ascertain the true facts, and he or she avoids such inquiry.[12] One has constructive notice of a fact when from all known facts and circumstances at the relevant time, one has reason to know that it exists.[13] A person has reason to know a fact when he or she has such information as would prompt a person exercising reasonable care to acquire knowledge of the fact in question or to infer its existence.[14]

CUMULATIVE SUPPLEMENT

Cases:

The law will sometimes impute knowledge, often called constructive knowledge, to a person who fails to learn something that a reasonably diligent person would have learned. Intel Corporation Investment Policy Committee v. Sulyma, 140 S. Ct. 768 (2020).

[END OF SUPPLEMENT]

Footnotes

1 Sledge v. State, 312 Ga. App. 97, 717 S.E.2d 682 (2011); Strother v. Lexington County Recreation Com'n, 332 S.C. 54, 504 S.E.2d 117 (1998); Halliburton v. Town of Halls, 295 S.W.3d 636 (Tenn. Ct. App. 2008); Rappleye v. Rappleye, 2004 UT App 290, 99 P.3d 348 (Utah Ct. App. 2004).

2 Nelson v. Superior Court, 89 Cal. App. 4th 565, 107 Cal. Rptr. 2d 469 (2d Dist. 2001).

3 Richardson v. Boes, 179 Ohio App. 3d 418, 2008-Ohio-6173, 902 N.E.2d 77 (6th Dist. Lucas County 2008).

4 O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340, 638 S.E.2d 96 (Ct. App. 2006).

5 Hue Nguyen v. Chapa, 305 S.W.3d 316 (Tex. App. Houston 14th Dist. 2009), review denied, (Apr. 2, 2010).

6 Zaske ex rel. Bratsch v. Lee, 651 N.W.2d 527 (Minn. Ct. App. 2002).

7 Tucker v. American Aviation & General Ins. Co., Reading, Pa., 198 Tenn. 160, 278 S.W.2d 677 (1955).

8 Blevins v. Johnson County, 746 S.W.2d 678 (Tenn. 1988).

9 § 8.

10 Trousdale v. Henry, 261 S.W.3d 221 (Tex. App. Houston 14th Dist. 2008).

11 Haik v. Sandy City, 2011 UT 26, 254 P.3d 171 (Utah 2011).

12 Haleemeh M.S. ex rel. Mohammad S.F. v. MRMS Realty Corp., 28 Misc. 3d 443, 904 N.Y.S.2d 862 (Sup 2010).

13 Garner v. Pearson, 545 F. Supp. 549 (M.D. Fla. 1982).

14 State ex rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adjustment, 131 Wis. 2d 101, 388 N.W.2d 593 (1986).

End of Document

58 Am. Jur. 2d Notice § 7

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

A. In General

§ 7. Constructive notice—Presumption of constructive notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 5

Whereas actual notice is usually a question of fact for the jury, constructive notice is a legal presumption not to be controverted.[1] Constructive notice is a legal inference from established facts and, like other legal presumptions, does not admit of dispute.[2] Constructive notice creates an irrebuttable presumption of actual notice.[3] Ignorance or knowledge of the facts may be found immaterial.[4]

Reminder:

Although the established presumption of notice is regarded as conclusive, it may be avoided by proof that an essential element is lacking. Proof of ignorance despite diligent inquiry will avoid the presumption.[5]

Footnotes

1 Bank of America v. Babu, 340 S.W.3d 917 (Tex. App. Dallas 2011), reh'g overruled, (June 21, 2011) and rule 53.7(f) motion granted, (Sept. 14, 2011).

2 Strother v. Lexington County Recreation Com'n, 324 S.C. 611, 479 S.E.2d 822 (Ct. App. 1996), aff'd as modified on other grounds, 332 S.C. 54, 504 S.E.2d 117 (1998); Mowdy v. Kelly, 667 S.W.2d 489 (Tenn. Ct. App. 1983) (overruled on other grounds by, Hawks v. City of Westmoreland, 960 S.W.2d 10 (Tenn. 1997)).

3 State v. Torma, 21 Conn. App. 496, 574 A.2d 828 (1990); Central GMC, Inc. v. Helms, 303 Md. 266, 492 A.2d 1313, 41 U.C.C. Rep. Serv. 803 (1985); Evans v. Allen, 2011 WL 5104360 (Tex. App. Houston 1st Dist. 2011).

4 Morgan v. Board of Water Works of Pueblo, 837 P.2d 300 (Colo. App. 1992); Harlin v. Mooney, 604 S.W.2d 199 (Tex. Civ. App. Dallas 1980), judgment rev'd on other grounds, 622 S.W.2d 83 (Tex. 1981).

5 § 15.

End of Document

58 Am. Jur. 2d Notice § 8

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

A. In General

§ 8. Constructive notice—Binding effect of constructive notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 5

Where a statute provides for constructive notice, it has the same effect as actual notice and binds equally.[1] However, in the absence of such statutory provision, it may not, strictly speaking, have such effect[2] although the presumption of notice arising from constructive notice may be regarded as irrebuttable.[3]

Footnotes

1 Town of Hurley v. New Mexico Municipal Boundary Commission, 94 N.M. 606, 614 P.2d 18 (1980); Ferguson v. Zimmerman, 1986 WL 878 (Ohio Ct. App. 2d Dist. Montgomery County 1986).
As to the nature and form of notice required by statute, see §§ 9, 10.

2 Tucker v. American Aviation & General Ins. Co., Reading, Pa., 198 Tenn. 160, 278 S.W.2d 677 (1955).

3 § 7.

58 Am. Jur. 2d Notice II B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

B. Notice Required by Statute or Contract

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Notice 9

A.L.R. Library

A.L.R. Index, Constructive Notice
A.L.R. Index, Notice and Knowledge
West's A.L.R. Digest, Notice 9

Forms

Am. Jur. Legal Forms 2d §§ 186:6, 186:7
Am. Jur. Pleading and Practice Forms, Notice § 8

End of Document

58 Am. Jur. 2d Notice § 9

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

B. Notice Required by Statute or Contract

§ 9. Notice required by statute; content of notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 9

A.L.R. Library

Timeliness of notice to public works contractor on federal project, of indebtedness for labor or materials furnished, 69 A.L.R. Fed. 600

Forms

Am. Jur. Legal Forms 2d § 186:7 (Notice—Pursuant to statute)
Am. Jur. Pleading and Practice Forms, Notice § 8 (Notice—Pursuant to statute or court rule)

Where a statute provides the manner, form, and time of notice, the notice must conform to the prescribed provisions.[1] While statutory notice provisions are mandatory to avoid chaos,[2] generally, substantial compliance with statutory notice provisions will usually be sufficient; to substantially comply with the requirements of the statute, a notice must be sufficient to advise the party to whom it is directed of the essentials of the statute.[3]

Where a statute requires notice to be given, but does not specify the type of notice, actual personal notice is required, and the notice must be personally served on the person to be notified.[4] However, if a statute or rule requires that notice be given, but fails to specify a particular form, "sufficient notice" is liberally construed, and in such a case, the notice, to be sufficient, must be reasonably certain to apprise those affected.[5] If the notice statute is constitutionally insufficient, actual notice is insufficient.[6]

Observation:

Generally, a party who has actual notice is not prejudiced by and may not complain of the failure to receive statutory notice.[7]

In giving statutory notice, the requirements of the statute must be strictly observed.[8] Where a specified mode of giving notice is prescribed by statute, that method is exclusive,[9] and any means of providing notice other than that prescribed by statute is ineffective.[10] However, statutes imposing technical requirements for a notice should not be strictly enforced where the party seeking enforcement had actual notice and cannot show prejudice as a result of the alleged failure to follow the technical requirements.[11] In the absence of explicit statutory language requiring it, a statute requiring the provision of notice by a specified means need not be strictly applied, and in such a case, the statutory requirement may be waived, or a party may be estopped from insisting upon a literal compliance with its terms.[12] Service under statutes explicitly prescribing exclusive modes of service is strictly enforced, and a party must advance some other compelling circumstance, in addition to actual notice, in order to have the court excuse noncompliance with the service provision.[13]

Where it is statutorily required that one party must give the other notice in order to establish rights and obligations, the notice must state the facts required by law, and in determining what facts must be stated, the legislative intent must be ascertained from all the terms of the statute, related statutes, common sense, and sound reasoning.[14] Notices required by law to be given by one party to the other in order to establish rights or obligations must state with reasonable certainty the essential facts required by law; the form of notice is not important, but it must convey with reasonable certainty the information reasonably needed to serve the statutory purpose.[15]

CUMULATIVE SUPPLEMENT

Cases:

Certain requirements regarding the details of a statutory notice (such as its verification and service) can be regarded as merely directory if such details are not of the very essence of giving notice and if the failure to strictly comply with them would not prejudice the rights of interested parties. Sunshine v. Brett, 2014 ME 146, 106 A.3d 1123 (Me. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Jaskowiak v. CM Const. Co., Inc., 717 N.W.2d 448 (Minn. Ct. App. 2006).

2 Estate of Rusche v. Harker, 118 Ohio Misc. 2d 1, 2001-Ohio-4357, 769 N.E.2d 424 (C.P. 2001).

3 State v. Kogler, 38 Kan. App. 2d 159, 163 P.3d 330 (2007).

4 People v. Seneca Ins. Co., 185 Misc. 2d 15, 710 N.Y.S.2d 776 (Sup 2000); City of Houston Fire Fighters' v. Morris, 949 S.W.2d 474 (Tex. App. Houston 14th Dist. 1997).
As to service of notice, generally, see § 27.

5 Garcia v. Industrial Com'n of Arizona, 141 Ariz. 184, 685 P.2d 1336 (Ct. App. Div. 1 1984).

6 Gravett v. Marks, 304 Ark. 549, 803 S.W.2d 551 (1991).

7 Weaver v. Kelling, 53 S.W.3d 610 (Mo. Ct. App. W.D. 2001).

8 General Insulation Co. v. Eckman Const., 159 N.H. 601, 992 A.2d 613 (2010).

9 Seider v. Board of Examiners of Psychologists, 1998 ME 78, 710 A.2d 890 (Me. 1998).

10 Main I Ltd. Partnership v. Venture Capital Const. and Development Corp., 154 Ariz. 256, 741 P.2d 1234 (Ct. App. Div. 1 1987).

11 Feldewerth v. Joint School District 28-J of Counties of Adams and Arapahoe ex rel. Hartenbach, 3 P.3d 467, 145 Ed. Law Rep. 769 (Colo. App. 1999);Weaver v. Kelling, 53 S.W.3d 610 (Mo. Ct. App. W.D. 2001).

12 Macon-Atlanta State Bank v. Gall, 666 S.W.2d 934 (Mo. Ct. App. W.D. 1984).

13 Magnuson v. Video Yesteryear, 85 F.3d 1424, 34 Fed. R. Serv. 3d 1455 (9th Cir. 1996) (Federal Rules of Civil Procedure); Modica v. Verhulst, 195 Wis. 2d 633, 536 N.W.2d 466, 102 Ed. Law Rep. 810 (Ct. App. 1995) (notice of claim statute).

14 In re Baker, 195 B.R. 309 (Bankr. D. N.J. 1996); Town of Randolph v. Estate of White, 166 Vt. 280, 693 A.2d 694 (1997).

15 Seaboard Sur. Co. v. Town of Greenfield, ex rel. Greenfield Middle School Bldg. Committee, 370 F.3d 215, 188 Ed. Law Rep. 50 (1st Cir. 2004) (applying Massachusetts law).

End of Document

58 Am. Jur. 2d Notice § 10

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

B. Notice Required by Statute or Contract

§ 10. Notice required by statute; content of notice—Requirement of written notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 9

Whenever notice is required or authorized by statute or judicial ruling, the notice must be in writing.[1] If a statute requires a written notice, an actual oral notice is insufficient.[2]

A written notice should be clear, definite, explicit, and not ambiguous; a notice that is ambiguous, misleading, and unintelligible to the average person who is to be affected by it is deemed insufficient.[3]

Where a statute, rule, or contract states that a written notice must be given, without stating how it is to be given, it is not enough that the notice is mailed, but it must also be received.[4]

Footnotes

1 Industrial Loan & Thrift Corp. v. Swanson, 223 Minn. 346, 26 N.W.2d 625, 171 A.L.R. 244 (1947).

2 In re Marriage of Lugo, 170 Cal. App. 3d 427, 217 Cal. Rptr. 74 (6th Dist. 1985).

3 Holly Development, Inc. v. Board of County Com'rs of Arapahoe County, 140 Colo. 95, 342 P.2d 1032 (1959).

4 Grenfell v. Anderson, 1999 MT 272, 296 Mont. 474, 989 P.2d 818 (1999).

End of Document

58 Am. Jur. 2d Notice § 11

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

II. Classes or Kinds of Notice

B. Notice Required by Statute or Contract

§ 11. Notice required by contract

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 9

A.L.R. Library

Provision in employment contract requiring written notice before instituting action, 4 A.L.R.3d 439

Forms

Am. Jur. Legal Forms 2d Notice § 186:6 (Notice—Pursuant to contract)
Am. Jur. Pleading and Practice Forms, Notice § 7 (Notice—Pursuant to contract)

The nature of notice required by contract depends on the provisions of the contract.[1] Parties are free to contract for any type of notice that they desire, and when a type of notice is specified, the provision is to be enforced as written whether it results in actual notice or not.[2] In the absence of a conflict with law or public policy, the parties may contract as to how notice is to be given, and when they do, giving notice by a method specified in the contract is sufficient even if it does not result in actual notice.[3] Unless otherwise specified, a contractual requirement of a written notice does not demand explicit wording in conformity with the language of the agreement.[4] Actual notice is required unless otherwise provided by contract or statute.[5]

Where notice is required by contract but nothing is said as to the manner of notification, it is sufficient to give oral notification[6] or to give notice by any other reasonable method.[7]

Footnotes

1 Baker v. Missouri Nat. Life Ins. Co., 372 S.W.2d 147 (Mo. Ct. App. 1963).

2 Razorback Contractors of Kansas, Inc. v. Board of County Com'rs of Johnson County, 43 Kan. App. 2d 527, 227 P.3d 29 (2010).

3 Westmoreland v. General Acc. Fire & Life Assur. Corp., 144 Conn. 265, 129 A.2d 623, 64 A.L.R.2d 976 (1957).

4 Board of Com'rs of Port of New Orleans v. Turner Marine Bulk, Inc., 629 So. 2d 1278 (La. Ct. App. 4th Cir. 1993), writ denied, 634 So. 2d 392 (La. 1994).

5 In re Mancha, 21 B.R. 497 (Bankr. D. Ariz. 1982), judgment aff'd, 35 B.R. 427 (B.A.P. 9th Cir. 1983); Freedman v. Continental Service Corp., 127 Ariz. 540, 622 P.2d 487 (Ct. App. Div. 1 1980).

6 Matter of Heather Companies, 36 B.R. 863 (Bankr. N.D. Ill. 1984).

7 Howard v. Blue Cross of Idaho Health Service, Inc., 114 Idaho 485, 757 P.2d 1204 (Ct. App. 1987).

End of Document

58 Am. Jur. 2d Notice III A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Notice 5, 6

A.L.R. Library

A.L.R. Index, Constructive Notice
A.L.R. Index, Notice and Knowledge
West's A.L.R. Digest, Notice 5, 6

End of Document

58 Am. Jur. 2d Notice § 12

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

A. In General

§ 12. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 5, 6

A person has no right to shut his eyes or ears to avoid information and then say that he or she has no notice; it will not suffice the law to remain willfully ignorant of a thing readily ascertainable by whatever party puts him or her on inquiry when the means of knowledge is at hand.[1] Lack of actual knowledge in such case may be considered a fraud.[2]

While a person has no right to shut his or her eyes or ears to avoid information and then say that he or she had no notice, in order to charge a person with notice of information that might have been learned by inquiry, the circumstances must be such as should reasonably suggest inquiry.[3] A fact is sufficient to put a person on notice if it would put a reasonable person on inquiry.[4] Where it appears that a party has knowledge or information of facts sufficient to put a prudent person upon inquiry, and he or she wholly neglects to make an inquiry or having begun it fails to prosecute it in a reasonable manner, then the inference of actual notice is necessary and absolute.[5]

Footnotes

1 Citizens Property Ins. Corp. v. European Woodcraft & Mica Design, Inc., 49 So. 3d 774 (Fla. Dist. Ct. App. 4th Dist. 2010), review denied, 68 So. 3d 234 (Fla. 2011); Demoulas v. Demoulas, 428 Mass. 555, 703 N.E.2d 1149, 37 U.C.C. Rep. Serv. 2d 376 (1998); In re C.J.G., 2006 WL 1097386 (Mo. Ct. App. S.D. 2006), transferred to Mo. S. Ct., 219 S.W.3d 244 (Mo. 2007).

2 Hubbard v. Home Federal Sav. and Loan Ass'n, 10 Kan. App. 2d 547, 704 P.2d 399 (1985); Harlin v. Mooney, 604 S.W.2d 199 (Tex. Civ. App. Dallas 1980), judgment rev'd on other grounds, 622 S.W.2d 83 (Tex. 1981).

3 Citizens Property Ins. Corp. v. European Woodcraft & Mica Design, Inc., 49 So. 3d 774 (Fla. Dist. Ct. App. 4th Dist. 2010), review denied, 68 So. 3d 234 (Fla. 2011).

4 Stephen v. Huckaba, 361 Ill. App. 3d 1047, 297 Ill. Dec. 860, 838 N.E.2d 347 (4th Dist. 2005).

5 Richardson v. Boes, 179 Ohio App. 3d 418, 2008-Ohio-6173, 902 N.E.2d 77 (6th Dist. Lucas County 2008).

End of Document

58 Am. Jur. 2d Notice § 13

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

A. In General

§ 13. Means of knowledge as notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 5, 6

Means of knowledge and knowledge itself are, in legal effect, the same thing where there is enough to give rise to a duty to inquire, and where a party fails to do so, the party is deemed to have notice of information that he or she should have obtained by inquiry.[1] Knowledge that one has, or should have under the circumstances, is imputed to him or her.[2] Whatever fairly puts a person on inquiry is sufficient notice where the means of knowledge are at hand, and if such person omits to inquire, he or she is then chargeable with all the facts that, by a proper inquiry, he or she might have ascertained.[3] Whatever puts a person on inquiry amounts in law to notice of such facts as an inquiry pursued with reasonable diligence and understanding would disclose.[4] When one has sufficient information to reasonably lead to a fact, the person must be deemed conversant with it.[5]

Footnotes

1 Hagin v. Fireman's Fund Ins. Co., 88 Ariz. 158, 353 P.2d 1029 (1960).

2 Union Ins. Exchange, Inc. v. Gaul, 393 F.2d 151 (7th Cir. 1968); Hagin v. Fireman's Fund Ins. Co., 88 Ariz. 158, 353 P.2d 1029 (1960).

3 Symons v. State, Dept. of Banking and Finance, 490 So. 2d 1322 (Fla. Dist. Ct. App. 1st Dist. 1986); Crown Coin Meter Co. v. Park P, LLC, 934 N.E.2d 142 (Ind. Ct. App. 2010); Hubbard v. Home Federal Sav. and Loan Ass'n, 10 Kan. App. 2d 547, 704 P.2d 399 (1985); Weidner v. Anderson, 174 S.W.3d 672 (Mo. Ct. App. S.D. 2005).

4 Northern Nat. Life Ins. Co. v. Lacy J. Miller Mach. Co., Inc., 311 N.C. 62, 316 S.E.2d 256 (1984); Carroll v. Kennon, 734 S.W.2d 34, 4 U.C.C. Rep. Serv. 2d 1309 (Tex. App. Waco 1987).

5 Rogers v. City of Evansville, 437 N.E.2d 1019 (Ind. Ct. App. 1982);O'Dea v. Olea, 2009 UT 46, 217 P.3d 704 (Utah 2009).

As to a limitation of the rule, see § 15.

End of Document

58 Am. Jur. 2d Notice § 14

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

A. In General

§ 14. Means of knowledge as notice—Means of information as duty to inquire

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 5, 6

The duty to use the means of knowledge to acquire the information has been referred to as a "duty of inquiry" or "duty to inquire," and this duty is imposed when such information is known as would prompt a person exercising reasonable care to acquire knowledge of the fact in question.[1] When those inquiries are not made, the person is chargeable with knowledge that would have been acquired through diligent inquiry.[2] The duty of inquiry amounts in law to notice.[3] Wherever inquiry is a duty, the person bound to make it is affected with knowledge of all that would have been discovered had the duty been performed. Means of knowledge with the duty of using them are equivalent to knowledge itself.[4]

Where there is a duty to find out and know, negligent ignorance has the same effect in law as actual knowledge.[5] Even a good-faith failure to undertake the inquiry is no defense.[6] It is no excuse that such an investigation, if made, might have failed to develop the truth.[7]

Footnotes

1 Amjems, Inc. v. F.R. Orr Const. Co., Inc., 617 F. Supp. 273 (S.D. Fla. 1985).

2 Lobsenz v. Davidoff, 182 Conn. 111, 438 A.2d 21 (1980); Germany v. Murdock, 99 N.M. 679, 662 P.2d 1346 (1983).

3 Union Ins. Exchange, Inc. v. Gaul, 393 F.2d 151 (7th Cir. 1968); Flack v. First Nat. Bank of Dalhart, 148 Tex. 495, 226 S.W.2d 628 (1950).

4 Hubbard v. Home Federal Sav. and Loan Ass'n, 10 Kan. App. 2d 547, 704 P.2d 399 (1985); Straitway Transport, Inc. v. Mundorf, 6 S.W.3d 734 (Tex. App. Corpus Christi 1999).

5 Lamke v. Lynn, 680 S.W.2d 285 (Mo. Ct. App. E.D. 1984); Welborn Mortg. Corp. v. Knowles, 851 S.W.2d 328 (Tex. App. Dallas 1993), writ denied, (July 30, 1993).

6 Blevins v. Johnson County, 746 S.W.2d 678 (Tenn. 1988).

7 State ex rel. Schulman v. City of Cleveland, 8 Ohio Misc. 1, 37 Ohio Op. 2d 12, 220 N.E.2d 386 (C.P. 1966).

End of Document

58 Am. Jur. 2d Notice § 15

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

A. In General

§ 15. Limitation on duty to inquire

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 5, 6

The question is not only whether an inquiry would have revealed the fact but also whether, when acting prudently, the person charged should, under the circumstances, have made an inquiry.[1] Although one who has notice of facts sufficient to put him or her on inquiry is deemed to have notice of all facts that a reasonable inquiry would disclose,[2] this rule does not impute notice of every conceivable fact, however remote, that could be learned from inquiry. It imputes notice of only those facts that are naturally and reasonably connected with the fact known and to which the known fact can be said to furnish a clue.[3] The rule applies only when the means of knowledge are at hand, and the party being charged with notice has a duty to pursue an inquiry. A fact claimed to put a person on notice of all facts discoverable through a reasonable inquiry must be of such a nature that it would normally excite an inquiry.[4] No duty can exist without knowledge of the facts or, at least, knowledge sufficient to put one on inquiry that will lead to discovery of the facts on which such duty rests.[5]

Footnotes

1 Hatcher v. Hall, 292 S.W.2d 619 (Mo. Ct. App. 1956).

2 §§ 12, 13.

3 Diimmel v. Morse, 36 Wash. 2d 344, 218 P.2d 334 (1950).

4 Carroll v. Kennon, 734 S.W.2d 34, 4 U.C.C. Rep. Serv. 2d 1309 (Tex. App. Waco 1987).
As to the nature of facts exciting inquiry, see § 16.

5 Hatcher v. Hall, 292 S.W.2d 619 (Mo. Ct. App. 1956).

End of Document

58 Am. Jur. 2d Notice § 16

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

A. In General

§ 16. Nature of facts exciting inquiry

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 5, 6

Notice of facts putting one on inquiry is notice of the facts that such inquiry would have revealed.[1] It is impossible, however, to lay down a general rule by which to determine what facts are sufficient to excite inquiry; thus, each case must be decided on its own facts.[2]

Notice sufficient to put a person on inquiry need not contain complete information on every fact material to the person's knowledge.[3] Whatever is notice enough to excite attention and put the party on guard and call for an inquiry is notice of everything to which such inquiry might have led.[4]

The question whether the circumstances are sufficient to give rise to a duty of further inquiry is ordinarily one of fact.[5]

Footnotes

1 § 14.

2 Gruber v. Price Waterhouse, 697 F. Supp. 859 (E.D. Pa. 1988), aff'd, 911 F.2d 960 (3d Cir. 1990); Commercial Credit Corp. v. Interstate Finance Corp., 236 Iowa 459, 18 N.W.2d 178, 159 A.L.R. 663 (1945).

3 Commercial Credit Corp. v. Interstate Finance Corp., 236 Iowa 459, 18 N.W.2d 178, 159 A.L.R. 663 (1945).

4 State ex rel. Oklahoma Bar Ass'n v. Scroggs, 2003 OK 21, 70 P.3d 821 (Okla. 2003); O'Dea v. Olea, 2009 UT 46, 217 P.3d 704 (Utah 2009).

5 Symons v. State, Dept. of Banking and Finance, 490 So. 2d 1322 (Fla. Dist. Ct. App. 1st Dist. 1986); Hatcher v. Hall, 292 S.W.2d 619 (Mo. Ct. App. 1956).

End of Document

58 Am. Jur. 2d Notice § 17

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

A. In General

§ 17. Presumption defeated by evidence of due diligence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 5, 6

The presumption of notice is generally regarded as irrebuttable once the presumption has arisen.[1] However, the conclusive presumption may be avoided if it appears that the person to be charged with notice: (1) was not heedless of the warning signals; but (2) made an inquiry; and (3) used due diligence to discover the facts suggested by the known facts; and yet (4) failed to obtain the requisite knowledge. Under these circumstances, the inference of notice arising from knowledge of facts leading to inquiry is rebutted, and the party is not affected by it.[2]

Footnotes

1 § 7.

2 First Nat. Bank of Laurel v. Johnson, 177 Miss. 634, 171 So. 11 (1936); Burgess v. Independent School Dist. No. 1 of Tulsa County, 1959 OK 37, 336 P.2d 1077 (Okla. 1959).

End of Document

58 Am. Jur. 2d Notice III B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Notice 6, 11

A.L.R. Library

A.L.R. Index, Constructive Notice
A.L.R. Index, Notice and Knowledge
West's A.L.R. Digest, Notice 6, 11

Forms

Am. Jur. Legal Forms 2d § 161:1203
Am. Jur. Pleading and Practice Forms, Notice §§ 31, 33, 34, 36

End of Document

58 Am. Jur. 2d Notice § 18

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

§ 18. Rumors, vague statements, or notoriety

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 6

Forms

Am. Jur. Pleading and Practice Forms, Notice § 33 (Instruction to Jury—vague reports of strangers insufficient as notice)

Mere rumors are neither notice nor the groundwork for the required inquiry that will charge a person with knowledge of what an inquiry would have revealed.[1] Rumors, vague statements, information from strangers or arising from other dubious or equivocal circumstances only arouse suspicion or create speculation and are not "facts" sufficient to incite an inquiry.[2]

The courts recognize facts known generally by well-informed persons but not of particular facts unless they are of common notoriety.[3] A person may be charged with notice by reason of the notorious nature of the thing to be noticed as contrasted with actual notice of such thing.[4]

Footnotes

1 Hagin v. Fireman's Fund Ins. Co., 88 Ariz. 158, 353 P.2d 1029 (1960); Lamke v. Lynn, 680 S.W.2d 285 (Mo. Ct. App. E.D. 1984).

2 Hagin v. Fireman's Fund Ins. Co., 88 Ariz. 158, 353 P.2d 1029 (1960); Carroll v. Kennon, 734 S.W.2d 34, 4 U.C.C. Rep. Serv. 2d 1309 (Tex. App. Waco 1987).

3 Razey v. Unified School Dist. No. 385, 205 Kan. 551, 470 P.2d 809 (1970).

4 New England Federal Credit Union v. Stewart Title Guar. Co., 171 Vt. 326, 765 A.2d 450 (2000).

End of Document

58 Am. Jur. 2d Notice § 19

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

§ 19. Suspicion of fact

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 6

There is a wide gap between suspicion and knowledge, and in matters of business, a person may often suspect what in fact he or she does not believe and has no reason to believe even when the evidence to excite suspicion is so slight that the person would never acknowledge it as a basis for action.[1] Accordingly, evidence that a person suspected something is not equivalent to evidence of notice.[2] Where one has reasonable grounds for suspecting or inquiring, he or she should suspect and inquire.[3] The law charges a person with knowledge that a proper inquiry would disclose.[4]

Footnotes

1 Commercial Credit Corp. v. Interstate Finance Corp., 236 Iowa 459, 18 N.W.2d 178, 159 A.L.R. 663 (1945).

2 Commercial Credit Corp. v. Interstate Finance Corp., 236 Iowa 459, 18 N.W.2d 178, 159 A.L.R. 663 (1945).

3 Cockshaw v. Guaranty Trust Co. of N.Y., 282 A.D. 688, 122 N.Y.S.2d 434 (1st Dep't 1953).

4 Fidelity & Deposit Co. of Maryland v. Queens County Trust Co., 226 N.Y. 225, 123 N.E. 370 (1919).

End of Document

58 Am. Jur. 2d Notice § 20

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

§ 20. Possession of land

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 6

Forms

Am. Jur. Pleading and Practice Forms, Notice § 34 (Instruction to jury—Possession as specific notice of rights of possessor and of possessor's lessor)

The possession of land constitutes notice to the world of every legal or equitable right that the possessor has in it.[1] It is a fact putting all persons on inquiry as to the nature of the occupant's claims,[2] as well as the claims of the person under whom he or she occupies.[3]

Where a purchaser possesses land under an unrecorded deed, such possession is notice of his or her title.[4] Although a deed recorded without acknowledgment or under a defectively executed acknowledgment may not be regarded as recorded for any purpose, if the grantee is in possession of the land, this is notice to the world of an equitable interest.[5]

A grantor's continued possession of land after the execution of a deed absolute in form, but in fact in trust for the grantor, is constructive notice of his or her rights in the land to one taking a conveyance from the grantee without actual notice of the trust.[6]

Possession is notice of only such facts as an inquiry by the occupant would naturally disclose, which usually consists of the name of the lessor where the occupant is a tenant.[7] Accordingly, possession by a grantee does not charge others with notice of facts that one in possession does not know and thus cannot reveal if asked.[8]

Footnotes

1 Lumb v. Redmond, 105 B.R. 658 (D. Kan. 1989); Williston Co-op. Credit Union v. Fossum, 459 N.W.2d 548 (N.D. 1990).

2 Machover v. Abdallah, 329 F.2d 800 (3d Cir. 1964); Sinclair Refining Co. v. Chaney, 114 Ohio App. 538, 20 Ohio Op. 2d 88, 184 N.E.2d 214 (3d Dist. Seneca County 1961).

3 Bell v. Protheroe, 1948 OK 7, 199 Okla. 562, 188 P.2d 868, 1 A.L.R.2d 315 (1948).

4 Salt Lake, G. & W. Ry. Co. v. Allied Materials Co., 4 Utah 2d 218, 291 P.2d 883 (1955).

5 D'Urso v. Lyon, 27 Conn. L. Rptr. 81, 2000 WL 528151 (Conn. Super. Ct. 2000).

6 Chandler v. Georgia Chemical Works, 182 Ga. 419, 185 S.E. 787, 105 A.L.R. 837 (1936).

7 Dodge v. Davies, 181 Or. 13, 179 P.2d 735 (1947).

8 Walker v. Fairbanks Investment Company, 268 F.2d 48 (9th Cir. 1959).
For detailed discussion of the tenant's possession as notice, see Am. Jur. 2d, Landlord and Tenant §§ 425 to 427.

End of Document

58 Am. Jur. 2d Notice § 21

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

§ 21. Possession of land—Continued possession by grantor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 6

A.L.R. Library

Occupancy of premises by both record owner and another as notice of title or interest of latter, 2 A.L.R.2d 857

Forms

Am. Jur. Pleading and Practice Forms, Notice § 31 (Instruction to jury—Cause for inquiry equivalent to actual notice—Prior adverse right in realty)

There are two views on the effect of a grantor's continued possession of land after the execution of a deed as notice of a claim adverse to the title conveyed, some cases applying the general rule that possession is notice of all equitable and other rights of the possessor, thus making the continued possession by the grantor an effective notice of his or her continued claims as effective as would possession be by a stranger to the record title.[1] However, a substantial number of cases take the position that the grantor's possession after conveyance is not inconsistent with the title that he or she has conveyed and that, therefore, one of the elements of constructive notice is lacking. Under this view, the general rule that possession of land is notice to a purchaser of the possessor's title does not apply to a grantor remaining in possession after giving a fully recorded deed, thus, a purchaser

from the grantee is not required to inquire whether the grantor has reserved any interest in the land, since the grantor's deed is conclusive, and declares that he or she made no reservation. The grantor is estopped from setting up any secret arrangement by which the grant is impaired. A purchaser may rely on the title conferred by the deed and may infer that the grantor's possession is merely permissive and is not antagonistic to the grant.[2]

Footnotes

1 Sinclair Refining Co. v. Chaney, 114 Ohio App. 538, 20 Ohio Op. 2d 88, 184 N.E.2d 214 (3d Dist. Seneca County 1961); Webb v. Stewart, 255 Or. 523, 469 P.2d 609 (1970).

2 U.S. v. Certain Parcels of Land Situate in San Bernardino County, 85 F. Supp. 986 (S.D. Cal. 1949); Hunter v. Hunter, 20 Pa. D. & C.3d 96, 1981 WL 480 (C.P. 1981).
For a more detailed discussion concerning continued possession of the grantor, see Am. Jur. 2d, Vendor and Purchaser §§ 403, 404.

End of Document

58 Am. Jur. 2d Notice § 22

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

§ 22. Newspaper publication

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 11

A.L.R. Library

Application of requirement that newspaper be locally published for official notice publication, 85 A.L.R.4th 581

Forms

Am. Jur. Pleading and Practice Forms, Notice § 36 (Instruction to jury—Newspaper publication as constructive notice—Effect of statute)

No one is chargeable with constructive notice of statements, advertisements, or other matter printed in a newspaper, in the absence of a statute expressly authorizing such publication and declaring the effect of compliance with its terms, or unless it is actually seen by the person to be charged.[1] This rule is not affected by the fact that the person to be charged is a subscriber to the paper or is in the habit of reading it.[2] If it is presumed that a person knows every fact published in a daily paper merely because he or she is a subscriber or a habitual purchaser of it, the person would be safe only by ceasing to subscribe or else by reading every word in it. To do one would be a serious privation, and the other would place a heavy burden on the individual. The law puts no citizen to a choice of such evils.[3]

Where a person is sent a marked copy of a newspaper containing a legal notice, he or she is not thereby charged with notice, in the absence of evidence that the person read it.[4]

Footnotes

1 Hatch v. Connecticut Bank & Trust Co., 26 Conn. Supp. 435, 226 A.2d 665 (Super. Ct. 1966); Standard "Tote" Inc. v. Ohio State Racing Commission, 58 Ohio Op. 337, 68 Ohio L. Abs. 19, 121 N.E.2d 463 (C.P. 1954).

2 Hatch v. Connecticut Bank & Trust Co., 26 Conn. Supp. 435, 226 A.2d 665 (Super. Ct. 1966).

3 Calamos v. Com., 184 Va. 397, 35 S.E.2d 397 (1945).

4 Hartford Trust Co. v. Town of West Hartford, 84 Conn. 646, 81 A. 244 (1911).
As to service of notice by publication, see § 33.

58 Am. Jur. 2d Notice § 23

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

§ 23. Recital in instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 6

A.L.R. Library

Recorded real property instrument as charging third party with constructive notice of provisions of extrinsic instrument referred to therein, 89 A.L.R.3d 901

Forms

Am. Jur. Legal Forms 2d § 161:1203 (Lease agreement provision—Notice—Necessity of directing attention to applicable time limitation)

If one is charged with notice—or if he or she actually knows—of an instrument, that person is also charged with notice of all facts appearing on the face of the instrument and is put on inquiry of any facts to which the face of the instrument would point to him or her.[1] Thus, notice of a deed is notice of its entire contents, and notice of whatever matters that one would have learned upon the inquiry that the instrument made it one's duty to pursue.[2] A paper that expressly refers to another paper available to the person gives notice of the contents of that other paper.[3] Thus, where an inspection of an instrument reveals that the bottom part has been cut off, or a reading of it reveals that important portions are missing, this is sufficient to put any reasonably

prudent person on notice that something is missing and to place on him or her the duty to inquire.[4] However, one who signs an instrument as an attesting witness generally is not chargeable with notice of the contents of the instrument.[5]

Where a person is to be charged with notice of the facts appearing on an instrument, the recitals in the instrument ought to explain themselves or lead to a source of explanation; they should be intelligible and significant so that they would lead a prudent person to inquire into the facts.[6]

Footnotes

1 Board of Regents of Oklahoma Colleges v. Walter Nashert & Sons, Inc., 1969 OK 100, 456 P.2d 524 (Okla. 1969); Chavis v. Gibbs, 198 Va. 379, 94 S.E.2d 195 (1956).

2 Frierson v. Watson, 371 S.C. 60, 636 S.E.2d 872 (Ct. App. 2006).

3 D. C. Transit System, Inc. v. U.S., 531 F. Supp. 808 (D.D.C. 1982), judgment aff'd, 790 F.2d 964 (D.C. Cir. 1986); Mister Donut of America, Inc. v. Kemp, 368 Mass. 220, 330 N.E.2d 810, 89 A.L.R.3d 896 (1975).

4 Universal C.I.T. Corp. v. Courtesy Motors, Inc., 8 Utah 2d 275, 333 P.2d 628 (1959).

5 In re Salzman's Estate, 17 Ill. App. 3d 304, 308 N.E.2d 83 (1st Dist. 1974).

6 Air Flow Heating & Air Conditioning, Inc. v. Baker, 326 So. 2d 449 (Fla. Dist. Ct. App. 4th Dist. 1976); Tuggle v. Cooke, 277 S.W.2d 729 (Tex. Civ. App. Fort Worth 1955), writ refused n.r.e., (July 13, 1955).

End of Document

58 Am. Jur. 2d Notice § 24

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

§ 24. Notice in another transaction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 6

Where it is apparent that knowledge acquired by a person in a previous transaction was present in his or her mind at the time of a subsequent transaction, that person is charged with the knowledge, and the fact that he or she remembered may be inferred from the proximity of the transactions.[1] However, where it is sought to charge a person with notice in a particular transaction, it is not enough that he or she had previously received notice of the fact while engaged in another transaction where the knowledge thus acquired has been forgotten.[2] Thus, the fact that a bank had received a contract of conditional sale for the purpose of securing the signature of the buyer and a down payment for the benefit of the seller is not sufficient to charge the bank with notice of the precise articles covered by the contract when making a separate contract with the buyer at a later date.[3]

Footnotes

1 Fireman's Fund Indem. Co. v. Boyle General Tire Co., 392 S.W.2d 352 (Tex. 1965).

2 Harrill v. Pitts, 194 La. 123, 193 So. 562 (1940).

3 State Sav. Bank, Sharpsburg v. Universal Credit Co., 233 Iowa 247, 8 N.W.2d 719 (1943).

End of Document

58 Am. Jur. 2d Notice § 25

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

§ 25. Public records

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 6

While the recording of an instrument affecting real estate is said to impart notice of the instrument,[1] at least as to those who are bound to search for it,[2] the mere filing or recording of an instrument in a public office generally does not constitute notice to the public.[3] An otherwise valid instrument not entitled to be recorded, or improperly recorded, or recorded out of the chain of title, does not operate as constructive notice.[4]

Footnotes

1 Am. Jur. 2d, Records and Recording Laws §§ 71 to 116.

2 Am. Jur. 2d, Records and Recording Laws § 77.

3 Statler Mfg., Inc. v. Brown, 691 S.W.2d 445 (Mo. Ct. App. S.D. 1985).

4 Rogers v. City of Evansville, 437 N.E.2d 1019 (Ind. Ct. App. 1982).

End of Document

58 Am. Jur. 2d Notice § 26

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

III. Notice Based on Duty to Know or Inquire

B. Matters Constituting Notice

§ 26. Laws and legislative reports

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 6

All persons are charged with knowledge of the provisions of statutes[1] and must take notice of them.[2] As frequently stated, ignorance of the law is no excuse,[3] and the only exception arises when the statute itself, or a regulation promulgated thereunder, requires notice to be given.[4] If an administrative agency pronouncement is to be binding, it requires notice and comment, and such a pronouncement would either appear on its face to be binding or is applied by the agency in a way that indicates it is binding.[5]

However, one cannot be charged with notice of a statute that takes effect upon a contingency that cannot be determined by the exercise of reasonable diligence.[6]

Footnotes

1 McCann v. Coughlin, 698 F.2d 112 (2d Cir. 1983); Brown v. Bishop Trust Co., 44 Haw. 385, 355 P.2d 179 (1960).

2 Shealey v. American Health Ins. Corp., 220 S.C. 79, 66 S.E.2d 461, 27 A.L.R.2d 942 (1951).

3 U. S. v. International Minerals & Chemical Corp., 402 U.S. 558, 91 S. Ct. 1697, 29 L. Ed. 2d 178 (1971); State v. Hall, 112 Wash. App. 164, 48 P.3d 350 (Div. 2 2002).

4 U.S. v. Markgraf, 736 F.2d 1179 (7th Cir. 1984).

5 General Elec. Co. v. E.P.A., 290 F.3d 377 (D.C. Cir. 2002).

6 Days Inn of America, Inc. v. Board of Transp., 24 N.C. App. 636, 211 S.E.2d 864 (1975).

End of Document

58 Am. Jur. 2d Notice IV Refs.

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Notice 10, 11

A.L.R. Library

A.L.R. Index, Constructive Notice
A.L.R. Index, Notice and Knowledge
West's A.L.R. Digest, Notice 10, 11

Forms

Am. Jur. Legal Forms 2d §§ 186:18 to 186:21
Am. Jur. Pleading and Practice Forms, Notice §§ 26, 27, 29, 30, 38

End of Document

58 Am. Jur. 2d Notice § 27

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

§ 27. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 10

A.L.R. Library

Propriety and Sufficiency of Electronic Filing of Notice of Appeal in Federal Courts, 71 A.L.R. Fed. 2d 569

Trial Strategy

Proof of Personal Jurisdiction in the Internet Age, 59 Am. Jur. Proof of Facts 3d 1
Recovery and Reconstruction of Electronic Mail as Evidence, 41 Am. Jur. Proof of Facts 3d 1

Forms

Am. Jur. Legal Forms 2d § 186:18 (Affidavit of having given notice—By personal service)
Am. Jur. Pleading and Practice Forms, Appeal and Error §§ 45, 45.1
Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure §§ 1573, 1710
Am. Jur. Pleading and Practice Forms, Notice § 26 (Affidavit of having given notice—By personal service)

Am. Jur. Pleading and Practice Forms, Notice § 38 (Instruction to jury—Personal service of notice to agent as effective against principal)

Law Reviews and Other Periodicals

Amado, Beat the Clock: The Deadlines for Filing Notices of Appeal Are Unforgiving, 33 L.A. Law. 26 (2010)

Gorman, Thomas, Clerk Commentary, Of Handguns, Tequila and Electronic Case Filing, 30-SEP Am. Bankr. Inst. J. 16 (2011)

Where a statute requires that a notice must be given, but it is silent as to the manner of giving such notice, the service must be personal[1] and, absent contrary language in a contract, proper service implies its receipt.[2] When a statute requires that a written notice be given, but does not specify how it must be given, the written notice is not effective until it is received; any of the various methods of service may be effective provided that the notice is actually received on or before the prescribed deadline.[3]

Where notice is actually conveyed to the person to be notified, as by delivery of a written notice to an agent authorized to receive notice, this is sufficient.[4]

Service of notice, unlike service of process, may be done by anyone without a court order.[5]

Observation:

The manner of notice is usually a matter of policy and discretion that will not be attacked unless it otherwise violates a constitutional or established statutory right.[6] A technical violation of a statutorily prescribed manner of notice is not necessarily fatal when it does not prejudice the party receiving the notice, and a court may disregard nonprejudicial failure to comply with strict notice requirements.[7] However, statutory provisions for service of notice must be strictly followed for a court to acquire jurisdiction.[8]

Footnotes

1 Hoschler v. Sacramento City Unified School Dist., 149 Cal. App. 4th 258, 57 Cal. Rptr. 3d 115, 218 Ed. Law Rep. 613 (3d Dist. 2007).

2 Thakral v. Mattran, 156 Ill. App. 3d 849, 109 Ill. Dec. 111, 509 N.E.2d 772 (2d Dist. 1987).

3 School Dist. RE-11J, Alamosa County v. Norwood, 644 P.2d 13, 3 Ed. Law Rep. 1122 (Colo. 1982).

4 Diamond v. Beutel, 247 F.2d 604 (5th Cir. 1957); State ex rel. Brubaker v. Pritchard, 236 Ind. 222, 138 N.E.2d 233, 60 A.L.R.2d 1239 (1956).

5 In re Marriage of Betts, 155 Ill. App. 3d 85, 107 Ill. Dec. 759, 507 N.E.2d 912 (4th Dist. 1987).
For discussion of service of process, see Am. Jur. 2d, Process §§ 97 to 135.

6 Wilner v. Beddoe, 33 Misc. 3d 900, 928 N.Y.S.2d 884 (Sup 2011).

7 Fleming v. Commissioner, Dept. of Corrections, 2002 ME 74, 795 A.2d 692 (Me. 2002).

8 Nieszner v. St. Paul School Dist. No. 625, 643 N.W.2d 645, 164 Ed. Law Rep. 884 (Minn. Ct. App. 2002).

End of Document

58 Am. Jur. 2d Notice § 28

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

§ 28. Evasion of service

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 10

A party may not escape the effect of the giving of a written notice by refusing to receive it when it is presented in person as a notice.[1] However, such evasion does not cure or render immaterial any defect in the document itself. A person who refuses a notice is simply deemed to have knowledge of its content, and the legal sufficiency of the content still must be determined.[2] Constructive receipt and notice are chargeable to one who willfully avoids actual notice by refusing to accept a notice.[3] However, such avoidance does not cure defects that would render the actual notice invalid were it received.[4]

Footnotes

1 Reliance Ins. Co. v. Mast Const. Co., 159 F.3d 1311, 42 Fed. R. Serv. 3d 439 (10th Cir. 1998); Grenfell v. Anderson, 1999 MT 272, 296 Mont. 474, 989 P.2d 818 (1999).

2 Rodell v. Nelson, 113 Idaho 945, 750 P.2d 966 (Ct. App. 1988).

3 Crenshaw v. Georgia Underwriting Ass'n, 202 Ga. App. 610, 414 S.E.2d 915 (1992); Walkenhorst-Newman v. Montgomery Elevator, 37 S.W.3d 283 (Mo. Ct. App. E.D. 2000).

4 Liberty Mut. Ins. Co. v. Wolfe, 7 Mass. App. Ct. 263, 386 N.E.2d 1303 (1979).

End of Document

58 Am. Jur. 2d Notice § 29

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

§ 29. Service by mailing; day of deposit as effective date

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 10

Forms

Am. Jur. Legal Forms 2d § 186:19 (Affidavit of having given notice—By mail)
Am. Jur. Pleading and Practice Forms, Notice § 27 (Affidavit of having given notice—By mail)

The mailing of a notice to a person at his or her known address within the state may be authorized as a mode of service.[1] Indeed, notice by certified or registered mail is a common method of providing notice in business, governmental, and legal contexts and is considered "reasonably calculated" to provide actual notice.[2] Certified mail is generally an adequate means of providing notice.[3]

Generally, service is accomplished by depositing the notice in the mail properly addressed and stamped.[4] Notice by mail is usually considered complete not upon proof of receipt but upon mailing.[5] The failure of the addressee to receive the notice is immaterial.[6] When a sender has done everything necessary for notice to arrive, notice is considered effective as to the intended recipient.[7] If the proper giving of the notice can be frustrated by the mere allegation of the defendant that he or she did not receive it, then the giving of notice by mail cannot be relied upon even though the rules specify such a method.[8]

Where service of notice by registered or certified mail is authorized, service is deemed effective when the notice is properly addressed, registered or certified, and mailed.[9] A statutory requirement for the use of registered or certified mail with return receipt requested refers exclusively to the delivery service offered by the U.S. Postal Service and not to a private delivery service

that provides a signed receipt.[10] After a reasonable period for receipt of the notice, notification cannot be defeated by the failure of the addressee to heed a "mail arrival notice" left by the mail carrier.[11] After mailing, a presumption arises that the notice has been received by the party to whom it was addressed if that notice was correctly addressed, stamped, and mailed.[12]

Observation:

Mailing a legal notice to the wrong address provides no notice and may violate due process.[13]

Where a statute on service by registered mail is permissive and does not require mailed notices to be sent by registered mail,[14] a notice given by regular mail, which is received, is valid even though the statute requires service by registered mail[15] as long as the recipient is not prejudiced by the variance from the statute.[16]

Footnotes

1 Colyear v. Tobriner, 7 Cal. 2d 735, 62 P.2d 741, 109 A.L.R. 191 (1936).
As to proof of service by mail, see § 38.

2 Carmel Credit Union v. Bondeson, 55 Mass. App. Ct. 557, 772 N.E.2d 1089 (2002).

3 Becker v. Sunset City, 2009 UT App 197, 216 P.3d 367 (Utah Ct. App. 2009).

4 School Dist. RE-11J, Alamosa County v. Norwood, 644 P.2d 13, 3 Ed. Law Rep. 1122 (Colo. 1982); Liberty Mut. Ins. Co. v. Caterpillar Tractor Co., 353 N.W.2d 854 (Iowa 1984).

5 American Family Mut. Ins. Co. v. Golke, 2009 WI 81, 319 Wis. 2d 397, 768 N.W.2d 729 (2009).

6 Johnson Service Co. v. Climate Control Contractors, Inc., 478 S.W.2d 643 (Tex. Civ. App. Austin 1972).

7 Wesco Distribution, Inc. v. Westport Group, Inc., 150 S.W.3d 553 (Tex. App. Austin 2004).

8 Montalbano Builders, Inc. v. Rauschenberger, 341 Ill. App. 3d 1075, 276 Ill. Dec. 506, 794 N.E.2d 401 (3d Dist. 2003).

9 Elliott v. Board of Equalization and Adjustment of Jefferson County, 469 So. 2d 602 (Ala. Civ. App. 1984); Johnson Service Co. v. Climate Control Contractors, Inc., 478 S.W.2d 643 (Tex. Civ. App. Austin 1972).

10 Nissan Div. of Nissan Motor Corp. in U.S. v. Fred Anderson Nissan, 337 N.C. 424, 445 S.E.2d 600 (1994).

11 Ledbetter v. School Dist. No. Eight, El Paso County, 163 Colo. 127, 428 P.2d 912 (1967); Robel v. Highline Public Schools, Dist. No. 401, King County, 65 Wash. 2d 477, 398 P.2d 1 (1965).

12 §§ 38, 40.

13 Moore v. Davidson, 292 Ga. App. 57, 663 S.E.2d 766 (2008).

14 Bear Creek Master Ass'n v. Edwards, 130 Cal. App. 4th 1470, 31 Cal. Rptr. 3d 337 (4th Dist. 2005).

15 Crummer v. Whitehead, 230 Cal. App. 2d 264, 40 Cal. Rptr. 826 (1st Dist. 1964).

16 Jones v. Stayman, 732 S.W.2d 437 (Tex. App. Dallas 1987).

58 Am. Jur. 2d Notice § 30

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

§ 30. Service by mailing; day of deposit as effective date—Day of receipt as effective date

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 10

Generally, the law requires that notice be actually received in order to be effective; if the mailed notice is in fact not received, then the notification is without any legal effect.[1] The mere deposit of a notice in the mail generally is not sufficient to bind a person who never receives it.[2]

In some cases, where a statute, rule, or contract merely states that a written notice must be given, without stating how it is to be given, it is not enough that the notice is mailed but it must also be received,[3] and it is deemed given only upon receipt.[4] The effective date of the notice is the day when it is received rather than the day when it is mailed.[5] Other cases, however, hold the opposite to the effect that where a statute or contract requiring a written notice allows a person to "give" a written notice and is silent regarding receipt, there is no requirement that the intended recipient "receive" the document before notice is considered "given."[6]

Footnotes

1 Windom v. William C. Ungerer, W.C., 903 A.2d 276 (Del. 2006).

2 Windom v. William C. Ungerer, W.C., 903 A.2d 276 (Del. 2006).

3 School Dist. RE-11J, Alamosa County v. Norwood, 644 P.2d 13, 3 Ed. Law Rep. 1122 (Colo. 1982); Liberty Mut. Ins. Co. v. Caterpillar Tractor Co., 353 N.W.2d 854 (Iowa 1984); Sajko v. Jefferson County Bd. of Educ., 314 S.W.3d 290, 258 Ed. Law Rep. 860 (Ky. 2010).

4 Estate of Rusche v. Harker, 118 Ohio Misc. 2d 1, 2001-Ohio-4357, 769 N.E.2d 424 (C.P. 2001).

5 Rapid Motor Lines v. Cox, 134 Conn. 235, 56 A.2d 519, 175 A.L.R. 296 (1947); Hotel Hay Corp. v. Milner Hotels, 255 Wis. 482, 39 N.W.2d 363 (1949).

6 Macke Laundry Service Ltd. Partnership v. Mission Associates, Ltd., 19 Kan. App. 2d 553, 873 P.2d 219 (1994); Lindsey v. South Carolina Tax Com'n, 323 S.C. 57, 448 S.E.2d 577 (Ct. App. 1994).

End of Document

58 Am. Jur. 2d Notice § 31

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

§ 31. Service by telephone

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 10

Verbal notice by telephone is not sufficient where a written notice is required.[1] However, where notice is not required to be in writing, it may be given by telephone,[2] and unless it is specifically refused, it is adequate.[3]

Footnotes

1 Baker v. Missouri Nat. Life Ins. Co., 372 S.W.2d 147 (Mo. Ct. App. 1963).

2 Hood v. Fireman's Fund Ins. Co., 412 F. Supp. 846, 22 Fed. R. Serv. 2d 793 (S.D. Miss. 1976); American Nat. Bank v. National Fertilizer Co., 125 Tenn. 328, 143 S.W. 597 (1911).

3 Shude v. American State Bank, 263 Mich. 519, 248 N.W. 886, 88 A.L.R. 736 (1933).

End of Document

58 Am. Jur. 2d Notice § 32

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

§ 32. Service by e-mail or fax

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 10

A.L.R. Library

Service of Process Via Computer or Fax, 30 A.L.R.6th 413
Propriety and Sufficiency of Electronic Filing of Notice of Appeal in Federal Courts, 71 A.L.R. Fed. 2d 569

Trial Strategy

Proof of Personal Jurisdiction in the Internet Age, 59 Am. Jur. Proof of Facts 3d 1
Recovery and Reconstruction of Electronic Mail as Evidence, 41 Am. Jur. Proof of Facts 3d 1

Forms

Am. Jur. Pleading and Practice Forms, Appeal and Error §§ 45, 45.1
Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure §§ 1573, 1710

Law Reviews and Other Periodicals

Amado, Beat the Clock: The Deadlines for Filing Notices of Appeal Are Unforgiving, 33 L.A. Law. 26 (2010)

Gorman, Thomas, Clerk Commentary, Of Handguns, Tequila and Electronic Case Filing, 30-SEP Am. Bankr. Inst. J. 16 (2011)

Where a written notice is required, an electronic mail message is insufficient to satisfy the requirement, and where the statute allows service by electronic means, the e-mail must be followed up by a mailed written notice.[1] A plaintiff may not generally resort to service of process by e-mail on his or her own initiative but must seek approval from the court for the use of such an alternative means of process.[2]

Practice Tip:

Where attempts to procure service of process by conventional means in the United States have been unsuccessful,[3] a district court acts within its discretion in allowing a plaintiff seeking to obtain international service of process to use an alternate service of process consisting of: (1) e-mail to an entity's posted e-mail address; and (2) regular mail to an attorney who had been consulted by the entity; and (3) service via the international courier used by the entity.[4]

The court rules may allow service via facsimile machine, especially when the parties or their attorneys have agreed to be bound by such service. However, as long as the service recipient obtains actual notice within the requisite time period, the mode of service is irrelevant if the recipient's rights are not prejudiced.[5]

Footnotes

1 People v. Welch, 190 Misc. 2d 195, 738 N.Y.S.2d 510 (County Ct. 2002).

2 Rio Properties, Inc. v. Rio Intern. Interlink, 284 F.3d 1007, 52 Fed. R. Serv. 3d 239 (9th Cir. 2002).

3 Fed. R. Civ. P. 4(f)(3), (h)(2).

4 Rio Properties, Inc. v. Rio Intern. Interlink, 284 F.3d 1007, 52 Fed. R. Serv. 3d 239 (9th Cir. 2002).

5 In re M.G., 301 Ill. App. 3d 401, 234 Ill. Dec. 733, 703 N.E.2d 594 (1st Dist. 1998).

End of Document

58 Am. Jur. 2d Notice § 33

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

§ 33. Constructive service; service by publication

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 11

A.L.R. Library

Eminent domain: permissible modes of service of notice of proceedings, 89 A.L.R.2d 1404

Forms

Am. Jur. Legal Forms 2d § 186:20 (Affidavit of having given notice—By publication)
Am. Jur. Pleading and Practice Forms, Notice § 29 (Affidavit of having given notice—By publication)

The rule applicable to process generally—that the legislature may authorize constructive service where the person to be notified is not subject to personal jurisdiction, and so, the proceeding is in rem[1]—applies to legal notices generally, and notice by publication may be authorized in such cases.[2] Notice by publication is considered a poor and sometimes hopeless substitute for actual service of notice, and its justification is difficult at best; but when the names, interests, and addresses of persons are unknown, plain necessity causes a resort to publication.[3]

Those whose names or whereabouts are unknown and cannot be learned with due diligence or those whose interests are uncertain may be notified by publication even though it is reasonably certain that such notice will prove futile.[4] However, notice by

publication is not enough with regard to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question.[5] Primary sources at hand, such as local tax rolls, deed records, judicial records, and other official records, as well as available secondary sources, such as the telephone directory or the city directory, must be exhausted before the approval of publication as a method of notification.[6]

Observation:

There is authority holding that notice by publication is insufficient to confer personal jurisdiction.[7]

Footnotes

1 Am. Jur. 2d, Process §§ 143, 153.

2 Planning and Conservation League v. Department of Water Resources, 83 Cal. App. 4th 892, 100 Cal. Rptr. 2d 173 (3d Dist. 2000), as modified on denial of reh'g, (Oct. 16, 2000); In re Commissioner of Banks and Real Estate, 327 Ill. App. 3d 441, 261 Ill. Dec. 775, 764 N.E.2d 66 (1st Dist. 2001).

3 City of New York v. New York, N. H. & H. R. Co., 344 U.S. 293, 73 S. Ct. 299, 97 L. Ed. 333 (1953).

4 Congregation Yetev Lev D'Satmar, Inc. v. Sullivan County, 59 N.Y.2d 418, 465 N.Y.S.2d 879, 452 N.E.2d 1207 (1983).

5 Congregation Yetev Lev D'Satmar, Inc. v. Sullivan County, 59 N.Y.2d 418, 465 N.Y.S.2d 879, 452 N.E.2d 1207 (1983).

6 Miller v. Wenexco, Inc., 1987 OK CIV APP 54, 743 P.2d 152 (Ct. App. Div. 3 1987).

7 Saxton v. Davis, 262 Ga. App. 72, 584 S.E.2d 683 (2003).

58 Am. Jur. 2d Notice § 34

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

§ 34. Service by posting in public place

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 10

A.L.R. Library

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210

Forms

Am. Jur. Legal Forms 2d § 186:21 (Affidavit of having given notice—By posting in a public place)
Am. Jur. Pleading and Practice Forms, Notice § 30 (Affidavit of having given notice—By posting in public place)

The term "public place," within the meaning of a requirement as to the posting of notices, is relative and not absolute. That which is a public place in a village may not be such in a city or a county.[1] What is a public place is a question partly of fact and partly of law, and after the jury has determined the use to which a place has been put, it is for the court to say whether the place is public.[2] The test to be applied, which will usually determine the question, is whether posting in that particular place will fulfill the purpose of giving the publicity required by the nature of the notice.[3]

A "public place" is defined as some place to which the public resorts so that a notice in such a place may be expected to be seen by persons who are interested in it or affected by it.[4] A public place may be any place where the public is permitted or invited to

go or congregate, a place where the public has a right to go and a right to be.[5] The fact that a notice is posted on private property does not affect its character as a public notice if it is placed where it is likely to be seen by interested and affected persons.[6]

Footnotes

1 Montgomery v. Reorganized School Dist. No. 1, Dade County, 339 S.W.2d 831, 90 A.L.R.2d 1201 (Mo. 1960).

2 Wann v. Reorganized School Dist. No. 6 of St. Francois County, 293 S.W.2d 408 (Mo. 1956).

3 Montgomery v. Reorganized School Dist. No. 1, Dade County, 339 S.W.2d 831, 90 A.L.R.2d 1201 (Mo. 1960).

4 Shepherd v. Kahle, 120 Wis. 57, 97 N.W. 506 (1903).

5 Montgomery v. Reorganized School Dist. No. 1, Dade County, 339 S.W.2d 831, 90 A.L.R.2d 1201 (Mo. 1960).

6 Mahon v. Buechel Sewer Const. Dist. # 1, 355 S.W.2d 683 (Ky. 1962).

58 Am. Jur. 2d Notice § 35

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

IV. Service of Notice

§ 35. Service by posting in public place—Particular public places for posting of notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 10

The requisite of a "public place" is satisfied if the posting is on or near a public highway in a position where persons passing on the highway will see and can read the notice.[1] The distance from a public street or road to the place where a notice is posted becomes important only when the place of posting depends on its proximity to a public street in order to be considered a public place.[2]

Other "public places" have been held to include—

— schools.[3]

— courthouses.[4]

— post offices.[5]

— railroad stations.[6]

— churches.[7]

— stores or retail shops,[8] especially in a front window facing the street.[9]

— fences.[10]

— bulletin boards.[11]

— trees.[12]

— poles.[13]

Footnotes

1 Montgomery v. Reorganized School Dist. No. 1, Dade County, 339 S.W.2d 831, 90 A.L.R.2d 1201 (Mo. 1960); State ex rel. Grant School Dist. No. 4 of Town of Grafton v. School Bd. of Jefferson Joint School Dist. No. 1 of Village and Town of Grafton, 4 Wis. 2d 499, 91 N.W.2d 219 (1958).

2 Montgomery v. Reorganized School Dist. No. 1, Dade County, 339 S.W.2d 831, 90 A.L.R.2d 1201 (Mo. 1960).

3 Montgomery v. Reorganized School Dist. No. 1, Dade County, 339 S.W.2d 831, 90 A.L.R.2d 1201 (Mo. 1960).

4 Dacus v. Knoxville Outfitting Co., 9 Tenn. App. 683, 1929 WL 1610 (1929).

5 Mahon v. Buechel Sewer Const. Dist. # 1, 355 S.W.2d 683 (Ky. 1962).

6 Whittingham v. Hopkins, 69 N.J.L. 189, 54 A. 250 (N.J. Sup. Ct. 1903).

7 Mitchell v. Sherrell, 11 Tenn. App. 210, 1929 WL 1695 (1929).

8 Bowker v. Semple, 51 R.I. 142, 152 A. 604 (1930).

9 Montgomery v. Reorganized School Dist. No. 1, Dade County, 339 S.W.2d 831, 90 A.L.R.2d 1201 (Mo. 1960).

10 Cox v. Townsend, 90 Mich. App. 12, 282 N.W.2d 223 (1979).

11 Bulldog Concrete Forms Sales Corp. v. Taylor, 195 F.2d 417, 49 A.L.R.2d 1 (7th Cir. 1952).

12 Walker v. Sundermeyer, 271 Mo. 579, 197 S.W. 102, 2 A.L.R. 1005 (1917).

13 Mahon v. Buechel Sewer Const. Dist. # 1, 355 S.W.2d 683 (Ky. 1962); Chambers v. Lee, 566 S.W.2d 69 (Tex. Civ. App. Texarkana 1978).

End of Document

58 Am. Jur. 2d Notice V Refs.

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

V. Pleading and Proof

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Notice 12 to 15

A.L.R. Library

A.L.R. Index, Constructive Notice
A.L.R. Index, Notice and Knowledge
West's A.L.R. Digest, Notice 12 to 15

Forms

Am. Jur. Pleading and Practice Forms, Notice §§ 9 to 11, 37

End of Document

58 Am. Jur. 2d Notice § 36

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

V. Pleading and Proof

§ 36. Generally; proof of service

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 13, 14

Forms

Am. Jur. Pleading and Practice Forms, Notice § 9 (Complaint, petition, or declaration—Allegation—Contractual notice as condition precedent to defendant's liability)
Am. Jur. Pleading and Practice Forms, Notice § 10 (Complaint, petition, or declaration—Allegation—Statutory notice as condition precedent to defendant's liability)
Am. Jur. Pleading and Practice Forms, Notice § 11 (Answer—Defense—Insufficient notice due to noncompliance with statute)
Am. Jur. Pleading and Practice Forms, Notice § 37 (Instruction to jury—Notice to agent as effective against principal)

Where notice to the defendant is a condition precedent to any recovery in an action, the fact of notice must be pleaded by the plaintiff, unless the matter is one equally within the knowledge of the defendant,[1] and the burden of proving such notice is on the party asserting the fact of notice.[2] Failure to comply with a statutory notice is a defense that must be asserted, and once placed in issue, the plaintiff bears the burden of proving compliance with the statute.[3]

Ordinarily, a preponderance of evidence is sufficient to prove notice.[4] Although a party may deny expressly that he or she had notice of a fact, the circumstances may justify the court in concluding that he or she did have knowledge.[5]

When service of a notice is an issue, the person alleging that the notice has been served must prove the fact of service.[6]

Footnotes

1 Am. Jur. 2d, Pleading § 138.

2 Buford by Buford v. Chicago Housing Authority, 131 Ill. App. 3d 235, 86 Ill. Dec. 926, 476 N.E.2d 427 (1st Dist. 1985).

3 In re E.E., 853 N.E.2d 1037 (Ind. Ct. App. 2006).

4 Rambus, Inc. v. Infineon Technologies AG, 164 F. Supp. 2d 743 (E.D. Va. 2001), aff'd in part, vacated in part, rev'd in part on other grounds, 318 F.3d 1081 (Fed. Cir. 2003); Motyl v. City of New Haven, 2001 WL 1231661 (Conn. Super. Ct. 2001).
As to proving actual notice, see § 37.

5 Hodges v. Beardsley, 269 Ala. 280, 112 So. 2d 482 (1959).

6 Simmons v. Winn-Dixie Greenville, Inc., 318 S.C. 310, 457 S.E.2d 608 (1995); Gibralter Sav. Ass'n v. Martin, 784 S.W.2d 555 (Tex. App. Amarillo 1990), writ denied, (Sept. 6, 1990).

End of Document

58 Am. Jur. 2d Notice § 37

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

V. Pleading and Proof

§ 37. Actual notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 14

Since actual notice is a question of fact,[1] proof of actual notice encompasses a wide array of degrees and grades of evidence, from the most direct and positive proof to the slightest circumstance from which a jury might be warranted in inferring notice.[2] A clear proof of actual notice is accepted as the equivalent of a formal notice when jurisdictional considerations are not involved and if the party to be notified shows no prejudice.[3]

Footnotes

1 § 41.

2 Guthrie v. National Advertising Co., 556 N.E.2d 337 (Ind. Ct. App. 1990); Lamke v. Lynn, 680 S.W.2d 285 (Mo. Ct. App. E.D. 1984).

3 Augustine v. Turkeyfoot Val. Area School Dist., 9 Pa. D. & C.3d 191, 1978 WL 290 (C.P. 1978).

End of Document

58 Am. Jur. 2d Notice § 38

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

V. Pleading and Proof

§ 38. Service by mail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 12 to 15

A.L.R. Library

Proof of mailing by evidence of business or office custom, 45 A.L.R.4th 476

Where a notice has been properly mailed, its receipt will be presumed, in the absence of evidence to the contrary.[1] However, the presumption may not be given a conclusive effect without violating the Due Process Clause of the 14th Amendment.[2] This presumption is rebuttable and may be overcome by evidence that the notice was never received.[3]

Proof of service of notice by mail ought to show compliance with the requisite conditions for the notice (whether statutory, regulatory, or contractual) and show that the notice, properly addressed, with postage prepaid has been duly deposited in the mail.[4]

It is not sufficient to assert that the general custom of one's office is to mail all letters.[5] However, the existence of a business custom is sufficient to warrant a presumption that notice has been sent, and it is the province of the trier of fact to decide whether that presumption is overcome by other evidence.[6] When relying on proof of a course of business or of office practice to prove mailing, it must be shown that the letter in question was placed in the usual office receptacle for outgoing mail, and in addition, the particular clerk whose duty it is to mail such letters should be available as a witness to testify that he or she invariably mailed all letters found in the receptacle.[7] However, personal knowledge is required only to establish regular office procedure and not the particular mailing.[8]

Practice Tip:

In large offices that handle a volume of mail, direct proof with respect to a particular letter is impractical; in such cases, proof of the settled custom and usage of the sender's office regularly and systematically followed in the transaction of business may suffice as proof of mailing.[9]

Where the parties agree that a certain form of notice has not been received, there is a presumption that the notice was not mailed, and where there is no evidence to the contrary, the fact finder must find the absence of the mailing.[10]

Proof of office filing procedures with proof that the notice was written in the normal course of business and was placed in the normal course of mailing is sufficient to show receipt of the item.[11]

An addressee's signature on a certified mail return receipt supports a finding that the addressee received the notice.[12]

Footnotes

1 Allstate Ins. Co. v. Patrylo, 144 A.D.2d 243, 533 N.Y.S.2d 436 (1st Dep't 1988); Strobel v. Marlow, 341 S.W.3d 470 (Tex. App. Dallas 2011) (a notice properly sent raises a presumption that the notice was received).

2 Mullen v. Braatz, 179 Wis. 2d 749, 508 N.W.2d 446 (Ct. App. 1993).

3 State ex rel. Hall v. Camper, 347 A.2d 137 (Del. Super. Ct. 1975); Macke Laundry Service Ltd. Partnership v. Mission Associates, Ltd., 19 Kan. App. 2d 553, 873 P.2d 219 (1994).

4 Nafstad v. Merchant, 303 Minn. 569, 228 N.W.2d 548 (1975); Smith v. Young, 620 S.W.2d 656 (Tex. Civ. App. Dallas 1981).

5 Hutchins v. Conciliation and Appeals Bd., 125 Misc. 2d 809, 480 N.Y.S.2d 684 (Sup 1984).

6 EZ Bldg. Components Mfg., LLC v. Industrial Claim Appeals Office of State, 74 P.3d 516 (Colo. App. 2003).

7 Hutchins v. Conciliation and Appeals Bd., 125 Misc. 2d 809, 480 N.Y.S.2d 684 (Sup 1984); Felician v. State Farm Mut. Ins. Co., 113 Misc. 2d 825, 449 N.Y.S.2d 887 (Sup 1982).

8 Meckel v. Continental Resources Co., 758 F.2d 811 (2d Cir. 1985).

9 First Nat. Bank of Independence v. Mid-Century Ins. Co., 559 S.W.2d 50 (Mo. Ct. App. 1977).

10 Flores v. Flores, 116 S.W.3d 870 (Tex. App. Corpus Christi 2003).

11 Cain v. Com. Dept. of Transp., 811 A.2d 38 (Pa. Commw. Ct. 2002).

12 State Farm Mut. Auto. Ins. Co. v. Kankam, 3 A.D.3d 418, 770 N.Y.S.2d 714 (1st Dep't 2004).

58 Am. Jur. 2d Notice § 39

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

V. Pleading and Proof

§ 39. Presumption of knowledge of contents of notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 12 to 15

Where the law prescribes written notice as a method of giving information, the receipt of a letter containing the information is conclusive proof of knowledge for the purpose.[1] Whether the recipient had read or could read the letter makes no difference because the sender fully complied with the direction of the law.[2]

Where the law does not require notice to be sent, there is no presumption that a letter is read by the receiver to whom it is delivered, thus, the delivery of a notice in writing to one who is blind or unable to read is not enough. Although the delivery may be a ground for an inference that the information was communicated, such inference may be rebutted by contrary evidence. A notice enclosed in a registered envelope and duly received may be held ineffectual where the envelope has not been opened. Instances may arise, however, in which, in view of the addressee's business relations with the sender, the addressee is put on inquiry by the sender's name on the envelope.[3]

When an addressee denies receiving a letter, the binding effect of the presumption that a letter properly mailed is received by its addressee ends, and the trier of fact is left to decide the issue based upon the weight of the evidence.[4] However, when the addressee acknowledges receipt of the letter, and then fails to read it or remember it, either by negligence or by conscious choice, the denial of knowledge of a material fact is not evidence of a lack of knowledge.[5]

Footnotes

1 Brown v. Otesa, 80 N.W.2d 92 (N.D. 1956).

2 Papale v. Fay, 36 Conn. Supp. 273, 418 A.2d 102 (Super. Ct. 1980).

3 Fritz v. Pennsylvania Fire Ins. Co., 85 N.J.L. 171, 88 A. 1065 (N.J. Ct. Err. & App. 1913); Fast v. Scruggs, 1933 OK 358, 164 Okla. 196, 23 P.2d 383 (1933).

4 Utah Motel Associates v. Denver County Bd. of Com'rs, 844 P.2d 1290 (Colo. App. 1992).

5 Burlington Northern R. Co. v. Akpan, 943 S.W.2d 48 (Tex. App. Fort Worth 1996).

End of Document

58 Am. Jur. 2d Notice § 40

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

V. Pleading and Proof

§ 40. Presumption of receipt

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 12 to 15

The mere denial of receipt is insufficient to rebut the presumption that proper notice was given by mail; however, denial of receipt does raise a question of fact.[1] In other words, merely denying receipt of a mailed notice does not rebut the presumption of receipt, but it may create an issue of fact to be determined by the jury.[2] The presumption of receipt of a notice by mail may be overcome by evidence that the notice was never in fact received.[3]

In order for the presumption to arise that notice was received, office practice must be geared so as to ensure the likelihood that a notice is always properly addressed and mailed.[4] It can be rebutted if a denial of receipt is accompanied by some proof that the regular office practice was not followed or that it was carelessly executed. In the context of a mass mailing, there may be circumstantial evidence rebutting proof of mailing without direct proof that the routine office procedure was either not followed or was carelessly carried out.[5]

Footnotes

1 In re Schepps Food Stores, Inc., 152 B.R. 136 (Bankr. S.D. Tex. 1993).

2 Windom v. William C. Ungerer, W.C., 903 A.2d 276 (Del. 2006).

3 In re Yoder Co., 758 F.2d 1114, 18 Fed. R. Evid. Serv. 547 (6th Cir. 1985); Vita v. Heller, 97 A.D.2d 464, 467 N.Y.S.2d 652 (2d Dep't 1983).

4 In re St. Louis Contracting Co., Bankr. L. Rep. (CCH) ¶ 73206, 1990 WL 391334 (E.D. Mo. 1990); Frontier Ins. Co. v. U.S., 25 Ct. Int'l Trade 717, 155 F. Supp. 2d 779 (2001).

5 Meckel v. Continental Resources Co., 758 F.2d 811 (2d Cir. 1985).

End of Document

58 Am. Jur. 2d Notice § 41

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

V. Pleading and Proof

§ 41. Question of law or fact

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Notice 15

Where there is conflicting evidence on the question whether a person had notice, the issue is one for the jury.[1] A court may declare that notice has been given where it finds no room for ordinary minds to differ on the question.[2]

A determination of whether there are sufficient facts known to require further investigation by a person charged with having notice is generally one of fact, and the task of determining whether the circumstances should give rise to such notice is left to the trier of fact.[3] Stated somewhat differently, the question of whether a party has notice is a question of fact that is foreclosed by the judgment of the trier of the facts; it becomes a question of law only when there is no room for ordinary minds to differ as to the proper conclusion to be drawn from the evidence.[4] In other words, the existence of actual or constructive notice is a question of fact properly within the province of the trial court.[5] The plaintiff cannot be charged with constructive notice without a finding to that effect by the trier of fact.[6]

The adequacy of a notice is a question of law.[7] Where a notice is not clear unless its meaning can be apprehended without explanation or argument, a court must determine whether adequate notice was given when the answer depends upon the construction of a written instrument.[8] Implied actual notice is an inference of fact and may be drawn by the court as a matter of law when warranted by the circumstances.[9] Also, the issue of compliance with notice requirements is generally not a question of fact for the jury but is rather a procedural matter to be determined prior to trial by the court.[10]

Incapacity to give notice is ordinarily a question of fact.[11]

Footnotes

1 SGM Partnership v. Nelson, 5 Haw. App. 526, 705 P.2d 49 (1985); Colorado Interstate Gas Co. v. Dufield, 9 Kan. App. 2d 428, 681 P.2d 25 (1984); Smith v. State ex rel. New Mexico Dept. of Parks and Recreation, 106 N.M. 368, 743 P.2d 124 (Ct. App. 1987).

2 Buford by Buford v. Chicago Housing Authority, 131 Ill. App. 3d 235, 86 Ill. Dec. 926, 476 N.E.2d 427 (1st Dist. 1985); BarclaysAmerican/Business Credit, Inc. v. E & E Enterprises, Inc., 697 S.W.2d 694, 42 U.C.C. Rep. Serv. 706 (Tex. App. Dallas 1985).

3 Moecker v. Antoine, 845 So. 2d 904 (Fla. Dist. Ct. App. 1st Dist. 2003); Infinite Energy, Inc. v. Georgia Public Service Com'n, 257 Ga. App. 757, 572 S.E.2d 91 (2002).

4 Hahn v. Love, 321 S.W.3d 517 (Tex. App. Houston 1st Dist. 2009).

5 Stamford Landing Condominium Ass'n, Inc. v. Charlene Lerman, 109 Conn. App. 261, 951 A.2d 642 (2008); Emmons v. White, 58 Mass. App. Ct. 54, 788 N.E.2d 557 (2003); Dvorak v. Dvorak, 2007 ND 79, 732 N.W.2d 698 (N.D. 2007); Texas Dept. of Criminal Justice v. Simons, 74 S.W.3d 138 (Tex. App. Beaumont 2002), judgment rev'd on other grounds, appeal dismissed, 140 S.W.3d 338 (Tex. 2004).

6 Renz v. Allstate Ins. Co., 61 Conn. App. 336, 763 A.2d 1072 (2001).

7 J.M. Parker & Sons, Inc. v. William Barber, Inc., 704 S.E.2d 64 (N.C. Ct. App. 2010).

8 Farrell v. Brown, 111 Idaho 1027, 729 P.2d 1090 (Ct. App. 1986).

9 Symons Corp. v. Tartan-Lavers Delray Beach, Inc., 456 So. 2d 1254 (Fla. Dist. Ct. App. 4th Dist. 1984).

10 Zotta v. Burns, 8 Conn. App. 169, 511 A.2d 373 (1986); Holland v. King, 500 N.E.2d 1229 (Ind. Ct. App. 1986); Smith v. State ex rel. New Mexico Dept. of Parks and Recreation, 106 N.M. 368, 743 P.2d 124 (Ct. App. 1987).

11 State v. Paulson, 2001 ND 82, 625 N.W.2d 528 (N.D. 2001).

End of Document

58 Am. Jur. 2d Notice Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

Notice
Romualdo P. Eclavea, J.D.

Topic Summary

Correlation Table

Notice

2002	2012
1	§1
2	§2
3	§3
4	§4
5	§5
6	§5
7	§6
8	§6
9	§7
10	§8
11	§12
12	§13
13	§14
14	§15
15	§16
16	§17
17	§18
18	§19
19	§20
20	§21
21	§22
22	§23
23	§24
24	§25
25	§26
26	§9
27	§9
28	§10
29	§11
30	§27
31	§28
32	§29
33	§30
34	§31
35	§32
36	§33
37	§34
38	§35
39	§36
40	§37

41	§39
42	§41
43	§38
44	§40

End of Document